



# City of Morgan Hill

## City Council Staff Report

File #: 15-054, Agenda Date: 3/18/2015, Version: 1

### SUCCESSOR AGENCY STAFF REPORT MEETING DATE: MARCH 18, 2015

PREPARED BY: Leslie A. Little, Assistant City Manager/Community Development  
APPROVED BY: City Manager

#### **APPROVAL OF PURCHASE AND SALE AND/OR ASSIGNMENT AGREEMENT(S) AND INITIAL ESCROW INSTRUCTIONS FOR THE DISPOSITION OF DOWNTOWN OPPORTUNITY SITE 2 (SE CORNER OF SECOND STREET AND MONTEREY ROAD), SITE 3 (DEPOT STREET BETWEEN SECOND AND THIRD STREET) AND SITE 4 (SE CORNER OF THIRD STREET AND MONTEREY ROAD); ESTABLISHING A SALE PRICE AND METHOD OF SALE FOR SITE 1A (DUPLEX - 50 E. FIRST STREET)**

Adopt resolution authorizing the following actions:

- a. **Site 2** - Approval of Purchase and Sale Agreement and Initial Escrow Instructions by and Between Lonestar Development and the Successor Agency to the former Morgan Hill Redevelopment Agency;
- b. **Site 3** - Approval Agreement of Purchase and Sale of Option and Initial Escrow Instructions by and between City Ventures and the Successor Agency to the former Morgan Hill Redevelopment Agency;
- c. **Site 4** - Approval of Agreement of Purchase and Sale and Initial Escrow Instructions by and between the City of Morgan Hill and the Successor Agency to the former Morgan Hill Redevelopment Agency.
- d. Direct the City Manager to take any and all actions to execute and implement these agreements, and
- e. Authorize the "market sale" of Site 1-A Duplex for a minimum of \$625,000 utilizing Smith Commercial Management, the current property manager and broker, for non-exclusive market and sale of the property.

#### **NARRATIVE:**

In August of 2014, the Successor Agency began the process of disposing of former Redevelopment assets in a manner consistent with the Long Range Property Management Plan (LRPMP) by broadcasting a Request for Qualifications/Proposals. On January 5, 2015, the Successor Agency received proposals in response to Phase II of a RFQ/P for the development and sale of the former Redevelopment Agency Downtown Opportunity Sites, known as sites 1, 1a, 2, 3, and 4. On February

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18, 2015 the Successor Agency recommended the sale of Site 2 to Lonestar Development for \$881,280, Site 4 to the City of Morgan Hill for \$525,000, and the Option for Site 3, to City Ventures for \$100,000. On February 25, the Morgan Hill Oversight Board concurred with those actions. Attached are the Sale and Assignment Agreements to facilitate these recommendations.

Next steps include forwarding the Sale and Assignment Agreements to the Oversight Board for action on March 25, 2015, then subsequently to the State Department of Finance (DOF) for approval. With the approval of DOF, the Lonestar Development and City Ventures will be required to place a good faith deposit of \$50,000 and \$100,000 respectively, in escrow. Each developer will have 60 days due diligence before their deposit becomes non-refundable. Once the due diligence period ends, both will be expected to close escrow. Once escrow is closed, Lonestar will take possession of Site 2 and City Ventures, will take possession of the Option and be bound by the timing and terms of the Option Agreement between the former Morgan Hill Redevelopment Agency and Llagas Valley Investments. That agreement ultimately requires the purchase of the site for \$2 million in April, 2016.

Site 4 will be purchased by the City of Morgan Hill immediately after the approval of DOF. There is no due diligence period for this sale.

#### **PRIOR CITY COUNCIL AND AGENCY ACTIONS:**

The Successor Agency developed and approved the Long Range Property Management Plan (LRPMP) required by the State for disposition of former Redevelopment Agency assets as part of AB 1484, Dissolution of California Redevelopment Agencies. The RFQ/P and related processes were reviewed and approved by the Morgan Hill Oversight Board and the State Department of Finance. The recommendations are consistent with the LRPMP. On March 10, 2015, the Morgan Hill Planning Commission made findings in accordance with California Government Code Section 65402, that the disposition of these properties conforms to the Morgan Hill General Plan.

#### **FISCAL AND RESOURCE IMPACT:**

The proposals have the potential to generate \$1,506,280, net of transactional expenses, in revenue to the Santa Clara County taxing entities. In addition, Site 2, which is publically owned, will return to the tax rolls with this private sale. The City of Morgan Hill's share of sales proceeds is approximately \$150,000.

#### **CEQA (California Environmental Quality Act):**

These actions are consistent with the 2009 Master Downtown Morgan Hill Specific Plan Environmental Impact Report.

#### **LINKS/ATTACHMENTS:**

Resolution

Sale and Assignment Agreements with City of Morgan Hill, City Ventures, Lonestar Development

**AGREEMENT OF PURCHASE AND SALE  
AND INITIAL ESCROW INSTRUCTIONS  
Site 2 (2<sup>nd</sup> Street and Monterey Road)  
Morgan Hill, California**

This Agreement of Purchase and Sale and Initial Escrow Instructions (“**Agreement**”), dated for reference purposes only as \_\_\_\_\_, 2015, is entered into by and between LONESTAR DEVELOPMENT, LLC, a \_\_\_\_\_ limited liability company (“**Buyer**”), and SUCCESSOR AGENCY TO THE FORMER MORGAN HILL REDEVELOPMENT AGENCY the (“**Seller**”).

**Recitals**

A. Seller is (or by the Close of Escrow (as defined below), will be, the owner of certain real property consisting of approximately 496/1000<sup>th</sup> (0.496) acres, together with the improvements located thereon, including, without limitation, a commercial/retail building (“**Building**”) consisting of approximately Forty-Eight Hundred and 00/100<sup>th</sup> (4,800) gross square feet, a pocket park, and a parking lot, in the City of Morgan Hill (“**City**”), County of Santa Clara (“**County**”), State of California (“**State**”), also known as Site 2 (2<sup>nd</sup> Street and Monterey Road) (Assessor’s Parcel Nos. 726-14-013, 726-14-014 and 726-14-015), as more particularly described on Exhibit A attached hereto (“**Property**”).

B. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer upon the terms, conditions and provisions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties agree as follows:

**Agreement**

**1. Purchase and Sale.** Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property on the terms and subject to the conditions set forth in this Agreement. For the purpose of this Agreement, the date on which Escrow Holder acknowledges in writing receiving a fully executed copy of this Agreement shall (subject to Section 3 below) be hereinafter referred to as the “**Effective Date.**”

**2. Purchase Price.** The purchase price (“**Purchase Price**”) for the Property shall be the amount of Eight Hundred Eighty-One Thousand Two Hundred Eighty and 00/100<sup>th</sup> Dollars (\$881,280.00). Buyer has the right to independently verify the square footage of the improvements and land, and agrees that if the square footage varies from that recited in this Agreement or in any materials provided by Seller or any representative, such variation shall have no effect on the Purchase Price.

### 3. Conditional Effectiveness of Agreement.

(a) This Agreement shall become effective only upon the satisfaction of each of the following conditions (collectively, the “**Conditions Precedent to Effectiveness**”) within the time period set forth herein:

(i) The Oversight Board to the Successor Agency to the former Morgan Hill Redevelopment Agency shall have approved this Agreement; and

(ii) Unless expressly waived by both parties in writing, the State of California Department of Finance shall have approved or been deemed to have approved the Oversight Board’s approval as provided in (i) above.

(b) Seller shall use diligent good faith efforts to cause the foregoing Conditions Precedent to Effectiveness to be satisfied on or before the Outside Date (defined below); provided, however, if, notwithstanding Seller’s good faith diligent efforts, the Conditions Precedent to Effectiveness have not been satisfied on or before July 31, 2015, or such later date as the parties may mutually agree each in its sole discretion (the “**Outside Date**”), this Agreement shall automatically terminate at 5:00 pm on the Outside Date. If this Agreement is terminated pursuant to this Section 3, the Deposit (as defined below) shall be returned to Buyer (provided that Buyer has complied with the terms of Section 23(n) below), and, except as otherwise provided in this Agreement, Seller and Buyer will have no further obligations or rights to one another under this Agreement.

**4. Payment of Purchase Price.** The Purchase Price shall be payable by Buyer to Seller as follows:

(a) Deposit. No later than two business days after the Effective Date, Buyer shall deposit with Chicago Title Insurance Company, 675 N First Street, San Jose, CA 95112 (Attention: Sherri Keller) (“**Escrow Holder**”) the sum of Fifty Thousand and 00/100<sup>th</sup> Dollars (\$50,000.00) (“**Deposit**”). The Deposit shall be invested by Escrow Holder with a financial institution acceptable to Buyer in a federally-insured interest-bearing demand account and the Deposit and all interest accrued thereon shall be credited to the Purchase Price upon the Close of Escrow (as defined in Section 5(b), below). Upon expiration of the Contingency Period (as defined in Section 8(a), below), the Deposit shall be immediately released to Seller, and except for a default by Seller, the Deposit shall become nonrefundable to Buyer.

(b) Balance of Purchase Price. On or before the Close of Escrow, Buyer shall deposit with Escrow Holder the balance of the Purchase Price, in immediately available funds, which shall be paid to Seller at Close of Escrow.

(c) Time of the Essence. Time shall be of the essence with respect to Buyer’s obligations to pay the Deposit and all other funds under this Agreement.

## 5. Escrow.

(a) Opening of Escrow. Within one business day after the Effective Date, Buyer shall open escrow (“**Escrow**”) with Escrow Holder. Buyer and Seller agree to execute and deliver to Escrow Holder, in a timely manner, all escrow instructions necessary to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend or supersede any portion of this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control. Escrow Holder shall, upon receipt of a fully executed copy of this Agreement, sign and date the Receipt by Escrow Holder attached hereto, and distribute it to all parties listed in the “Notices” sections of the Agreement.

(b) Close of Escrow. For the purpose of this Agreement, the “**Close of Escrow**” shall be defined as the date that the Grant Deed (as defined in Section 6, below) is recorded in the Official Records of the County. The Close of Escrow shall occur within ten business days after the expiration of the Contingency Period, unless extended by the mutual written consent of the parties hereto.

6. Conditions of Title. The Property shall be conveyed to Buyer by Seller by a grant deed, substantially in the form attached hereto as Exhibit B (“**Grant Deed**”), subject only to (a) such title matters (other than liens to secure payment of real estate taxes and assessments, including supplemental taxes) affecting the Property created by or with the written consent of Buyer; (b) all applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relative to building, zoning and land use) affecting the development, use, occupancy or enjoyment of the Property; (c) all matters which would be apparent from an inspection of the Property; (d) all matters which would be disclosed by a survey of the Property; and (e) exceptions which are approved and/or accepted by Buyer in accordance with Section 8(a)(i) of this Agreement (collectively, “**Approved Conditions of Title**”). As the Property is publicly owned, it is exempt from property taxes, although tenants may be subject to possessory interest taxes under Revenue and Taxation Code Section 107, etc.

7. Title Policy. Title shall be evidenced by Escrow Holder’s title insurance underwriter (“**Title Company**”) issuing its standard California Land Title Association (“**CLTA**”) Owner’s Policy of Title Insurance to Buyer in an amount equal to the Purchase Price, showing title to the Property vested in Buyer, subject only to the Approved Conditions of Title (“**Title Policy**”). Buyer shall pay all expense of issuing the Title Policy, including (if Buyer elects to have Escrow Holder issue its American Land Title Association (“**ALTA**”) Extended Coverage Owner’s Policy of Title Insurance), the expense of such ALTA premium increment and any survey costs associated with such ALTA policy. In addition, Buyer shall pay for any endorsements to the Title Policy. Buyer’s ability to obtain an ALTA policy shall not be a condition to the Close of Escrow.

## 8. Conditions to Close of Escrow.

(a) Conditions to Buyer’s Obligations. The Close of Escrow and Buyer’s obligation to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions (or Buyer’s waiver in writing thereof) for Buyer’s benefit

on or prior to the dates designated below for the satisfaction of such conditions, or the Close of Escrow in the absence of a specified date:

(i) Title. Pursuant to the terms and conditions of this subsection, Buyer shall have the right to approve any and all matters of and exceptions to title of the Property, as disclosed by the following documents and instruments (collectively, **“Title Documents”**): (A) a Preliminary Report issued by Escrow Holder with respect to the Property; and (B) legible copies of all documents, whether recorded or unrecorded, referred to in such Preliminary Report. Seller shall cause Escrow Holder to deliver the Title Documents to Buyer within five calendar days following the Effective Date. Buyer shall have until 5:00 PM (local time) on the date that is the later of (x) 30 calendar days following the Effective Date or (y) ten calendar days following satisfaction of all Conditions Precedent to Effectiveness (as defined in Section 3, above) (**“Contingency Period”**) to give Seller and Escrow Holder written notice (**“Buyer’s Title Notice”**) of Buyer’s approval or disapproval of the Title Documents. The failure of Buyer to give Buyer’s Title Notice to Seller within the specified time period shall be deemed Buyer’s disapproval of the Title Documents. In the event that Buyer’s Title Notice disapproves, or is deemed to have disapproved, of any matter of title shown in the Title Documents, Seller shall, within five business days after Buyer’s Title Notice is received by Seller, give Buyer written notice (**“Seller’s Title Notice”**) of those disapproved title matters, if any, which Seller is unwilling or unable after reasonable and good faith efforts to have eliminated from title to the Property by the Close of Escrow. Seller’s failure to provide Seller’s Title Notice within said five business day period shall be deemed Seller’s election not to remove any of the disapproved exceptions in Buyer’s Title Notice. Notwithstanding the foregoing, Seller agrees to remove on the Close of Escrow any deeds of trust, if any, whereby Seller is the trustor or borrower which are currently recorded against the Property. If Seller is unable or unwilling to remove all of the title matters objected to by Buyer in Buyer’s Title Notice, or fails to deliver Seller’s Title Notice, Buyer shall have five business days from receipt of Seller’s Title Notice, or expiration of the time period within which Seller is to respond, to notify Seller in writing that either (1) Buyer is willing to purchase the Property, subject to such disapproved exceptions, or (2) Buyer elects to terminate this transaction. Failure of Buyer to take either one of the actions described in clause (1) or (2) in the previous sentence shall be deemed to be Buyer’s election to take the action described in clause (2). If this Agreement is terminated pursuant to this Section 8(a)(i), the Deposit shall be returned to Buyer (provided that Buyer has complied with the terms of Section 23(n) below), and, except as otherwise provided in this Agreement, Seller and Buyer will have no further obligations or rights to one another under this Agreement;

(ii) Inspections and Studies/Costs. During the Contingency Period, Buyer shall have the right to conduct any and all non-destructive inspections, investigations, tests and studies (including, without limitation, investigations with regard to zoning, building codes and other governmental regulations, architectural inspections, engineering tests, economic feasibility studies and soils, seismic and geologic reports and environmental testing) with respect to the Property as Buyer may elect to make or maintain. The cost of any such inspections, tests and/or studies shall be borne by Buyer.

Between the Effective Date and the Close of Escrow, Buyer and Buyer’s employees, agents, contractors, subcontractors and consultants (collectively, **“Buyer’s**

**Representatives**”) shall have the right to enter upon the Property, at reasonable times during ordinary business hours upon notice to Seller at least one business day prior to entry, to perform such inspections, investigations, tests and studies. Buyer, in performing its inspections, investigations, tests and studies hereunder shall not unreasonably interfere with the operation of the Property or any tenant, and agrees to coordinate its activities on the Property with Seller in advance to avoid any such interference. Buyer shall be permitted to meet with current tenants of the Property, provided that, Buyer provides written notice to Seller as required hereunder and Seller or Seller’s representative shall have the opportunity to attend said meetings. Following any such tests or inspections, Buyer agrees to promptly return any portions of the Property damaged or altered by Buyer during such tests or inspections to substantially the same condition which existed prior to such test or inspection.

Buyer shall indemnify, defend and hold Seller and the Property harmless from any and all claims, damages or liabilities arising out of or resulting from the entry onto or activities upon the Property by Buyer or Buyer’s Representatives or liens arising from Buyer’s due diligence review of the Property. Prior to any entry on to the Property by any of Buyer’s Representatives, Buyer shall deliver to Seller an endorsement to a commercial general liability insurance policy which evidences that such Buyer’s Representative is carrying a commercial general liability insurance policy with a financially responsible insurance company acceptable to Seller, covering the activities of such Buyer’s Representative on or upon the Property. Such endorsement shall evidence that such insurance policy shall have a per occurrence limit of at least One Million and 00/100<sup>th</sup> Dollars (\$1,000,000.00) and an aggregate limit of at least Three Million and 00/100<sup>th</sup> Dollars (\$3,000,000.00), shall name Seller as an additional insured, and shall be primary and non-contributing with any other insurance, self-insurance or joint self-insurance available to Seller.

Prior to the expiration of the Contingency Period, Buyer shall deliver to Seller and Escrow Holder written notice (“**Contingency Period Notice**”) of its approval or disapproval of the Property and the Documents and Materials (as defined in Section 8(a)(viii), below). (The Contingency Period Notice may, but need not, be combined with the Buyer’s Title Notice.) The Contingency Period Notice to the Escrow Holder shall be accompanied by the Natural Hazards Disclosure Statement (if not yet signed and returned to Seller). The failure of Buyer to timely deliver the Contingency Period Notice shall be deemed to constitute Buyer’s disapproval of the Property and the Documents and Materials, and the Deposit shall be returned to Buyer (provided that Buyer has complied with the terms of Section 23(n) below), and, except as otherwise provided in this Agreement, Seller and Buyer will have no further obligations or rights to one another under this Agreement.

If this Agreement is terminated pursuant to this subsection, Buyer shall deliver to Seller (y) the Documents and Materials delivered to Buyer by Seller, and (z) at no cost and without warranty as to correctness, copies of all reports, studies, maps and engineering studies that were generated by third parties for Buyer with respect to the Property, including, but not limited to, all environmental reports, surveys, marketing reports, geotechnical reports, lot studies and improvement plans;

(iii) Title Insurance. As of the Close of Escrow, Title Company shall have committed to issue the Title Policy to Buyer;

(iv) Seller's Representations. All representations and warranties made by Seller to Buyer in this Agreement shall be true and correct on the date hereof and shall be true and correct in all material respects as of the Close of Escrow;

(v) Natural Hazards Disclosure Statement. No later than ten business days prior to the scheduled expiration of the Contingency Period, Seller shall deliver to Buyer a Natural Hazards Disclosure Statement for the Property. Buyer shall have approved the Natural Hazards Disclosure Statement and returned a signed copy thereof to Seller by the expiration of the Contingency Period;

(vi) Seller's Obligations. As of the Close of Escrow, Seller shall have performed all of the obligations required to be performed by Seller under this Agreement;

(vii) Assignment of Leases. Seller shall have delivered the Assignment of Leases ("**Assignment of Leases**") substantially in the form attached hereto as Exhibit C, to Escrow Holder on or prior to the Close of Escrow, which Assignment of Leases assigns all of Seller's right, title and interest in and to the leases ("**Leases**") for the Property. A list of all Leases affecting the Property is attached hereto as Exhibit C-1;

(viii) Documents and Materials. Within ten calendar days after the Effective Date, Seller shall deliver to Buyer all of the documents and materials described on Exhibit E attached hereto, to the extent within Seller's, or the current property manager's, possession or control ("**Documents and Materials**"). Upon delivery of the Documents and Materials, Seller shall deliver an acknowledgment letter to Buyer setting forth the date of compliance with this Section 8(a)(viii) and setting forth the list of Documents and Materials actually delivered to Buyer. Seller makes no representation or warranty as to the accuracy or completeness of any of the Documents and Materials which were not prepared by Seller; and

(ix) Estoppel Certificate. Buyer shall have received tenant estoppel certificates from the tenants under the Leases (together, "**Tenants**") using the Standard Estoppel Certificate form created by the American Industrial Real Estate Association ("**Estoppel Certificate**"); provided, however, that, any reasonable changes requested by any Tenant or any changes made to the form Estoppel Certificate in order to conform the Estoppel Certificate to the specific requirements under the Leases for delivery of estoppel certificates, and a provision requiring Tenants to acknowledge that Seller may rely on the Estoppel Certificate, shall be deemed acceptable to Buyer. Seller shall deliver the Estoppel Certificates at least five business days prior to the scheduled Close of Escrow. Provided that Seller has used reasonable efforts to deliver the Estoppel Certificates, Seller's failure to obtain all Estoppel Certificates shall in no event constitute a breach or default by Seller under this Agreement.

(b) Conditions to Seller's Obligations. The Close of Escrow and Seller's obligation to consummate the transactions contemplated in this Agreement are subject to the satisfaction of the following conditions (or Seller's waiver thereof) for Seller's benefit on or prior to the dates designated below for the satisfaction of such conditions, or the Close of Escrow in absence of a specified date:



(i) Buyer's Obligations. Buyer shall have timely performed all of the obligations required to be performed by Buyer under this Agreement;

(ii) Buyer's Representations. All representations and warranties made by Buyer to Seller in this Agreement shall be true and correct on the date hereof and shall be true and correct in all material respects as of the Close of Escrow;

(iii) Assignment of Leases. Buyer shall have delivered the Assignment of Leases to Escrow Holder on or prior to the Close of Escrow;

(iv) Purchase Price. Buyer shall have timely delivered the Purchase Price and other sums owing under this Agreement in good funds to Escrow Holder and fully, faithfully and timely performed all of its other obligations under this Agreement; and

(v) Natural Hazards Disclosure Statement. Prior to the end of the Contingency Period, Buyer shall have returned a signed copy of the Natural Hazards Disclosure Statement to the Seller, which shall be mutually acceptable to both Buyer and Seller.

(c) Failure of Condition to Close of Escrow. If any of the conditions set forth in Section 8(a) or Section 8(b) are not timely satisfied or waived by the appropriate benefited party for a reason other than the default of Buyer or Seller, this Agreement shall terminate, and the Deposit and all other monies delivered to Escrow Holder by Buyer shall be immediately returned to Buyer (provided that Buyer has complied with the requirements of Section 23(n) below), and except as otherwise provided herein, the parties shall have no further obligations hereunder.

**9. Deposits By Seller.** At least one business day prior to the Close of Escrow, Seller shall deposit with Escrow Holder the following documents:

(a) Grant Deed. The Grant Deed, duly executed and acknowledged in recordable form by Seller, conveying fee simple title to the Property to Buyer.

(b) FIRPTA Certificate. A certification, acceptable to Escrow Holder, duly executed by Seller under penalty of perjury, setting forth Seller's address and federal tax identification number in accordance with and/or for the purpose of the provisions of Sections 7701 and 1445, as may be amended, of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

(c) California Franchise Tax Withholding. A certification, acceptable to Escrow Holder, that Seller is exempt from the withholding provisions of the California Revenue and Taxation Code, as may be amended from time to time, and that neither Buyer nor Escrow Holder is required to withhold any amount from the Purchase Price pursuant to such provisions.

(d) Assignment of Leases. Two original counterparts of the Assignment of Leases duly executed and acknowledged by Seller.

**10. Deposits By Buyer.** At least one business day prior to the Close of Escrow, Buyer shall deposit or cause to be deposited with Escrow Holder the following:

(a) Purchase Price. The balance of the Purchase Price (as adjusted by the Deposit and prorations provided for herein), in cash or immediately available funds.

(b) Assignment of Leases. Two original counterparts of the Assignment of Leases duly executed and acknowledged by Buyer.

**11. Costs and Expenses**. As the Seller is a political subdivision of the State of California, no documentary transfer taxes or recording fees are required to record the Grant Deed under Revenue and Taxation Code Section 11922 and Government Code Section 27383, respectively. Except as otherwise specified in this Agreement, Seller and Buyer shall equally divide all escrow fees, and costs. Buyer and Seller shall each pay all legal and professional fees and fees of other consultants incurred by Buyer and Seller, respectively. Any costs incurred through the Escrow relating to the Property that are not specifically allocated to Buyer or Seller under this Agreement shall be apportioned in the manner customary in the County.

**12. Prorations**.

(a) Taxes/Assessments. [Not applicable, as the Property is publicly owned.]

(b) Other Expenses. All expenses for the Property, including common area maintenance expenses, shall be prorated as of 12:01 a.m. on the day of the Close of Escrow between the parties based upon the latest available information.

(c) Security Deposit. Buyer shall be credited and Seller shall be charged with any security deposits made by the Tenants under the Leases.

(d) Rents. Any prepaid rents under the Leases shall be credited to Buyer as of the Close of Escrow. Rents in arrears will not be prorated, but will be paid to Seller by Buyer when collected by Buyer, such payment to occur every 30 calendar days following the Close of Escrow. The first monies received by Buyer from each Tenant after the Close of Escrow shall be applied first to current rent due (unless specifically otherwise designated by the Tenant) and thereafter shall be applied to rent in arrears.

(e) Arrearages. Seller reserves all claims and causes of action against Tenants and others who are in arrears, and Buyer shall provide its reasonable cooperation to Seller in pursuing such arrearages and shall promptly remit arrearages and other sums due to Seller upon receipt thereof, subject to Section 12(d) above.

**13. Corrections**. If any errors or omissions are made regarding adjustments and prorations as set forth herein, the parties shall make the appropriate corrections promptly upon discovery thereof. If any estimates are made at the Close of Escrow regarding adjustments or prorations, the party shall make the appropriate correction promptly when accurate information becomes available. Any corrected adjustment or proration shall be paid in cash to the party entitled thereto.

**14. Condition and Inspection of Property**.

(a) Notwithstanding any other provision of this Agreement to the contrary, Seller makes no representation or warranty (except as expressly set forth in Section 16 below) whatsoever regarding the Property including, without limitation:

- (i) The size and dimensions of any portion of the Property;
- (ii) The size and dimensions of the Building;
- (iii) The suitability of the Property or Building for the Buyer's planned use, including availability and adequacy of water, sewage, fire protection, and any utilities serving the Property;
- (iv) All matters relating to title including extent and conditions of title to the Property, taxes, assessments, and liens;
- (v) All legal and governmental laws, statutes, rules, regulations, ordinances, limitations on title, restrictions or requirements concerning the Property including zoning, use permit requirements and building codes;
- (vi) Natural hazards, including flood plain issues, currently or potentially concerning or affecting the Property;
- (vii) The physical, legal, economic and environmental condition and aspects of the Property, and all other matters concerning the conditions, use or sale of the Property, including any permits, licenses, agreements, and liens, zoning reports, engineers' reports and studies and similar information relating to the Property, and Hazardous Materials (as defined below). **"Hazardous Materials"** means any and all substances, contaminants, chemicals, wastes, sewage, materials or emissions which are now or hereafter regulated, controlled, prohibited or otherwise affected by any present or future local, state or federal statute, ordinance, code, rule, regulation, order, decree, permit or other law now or hereafter in effect including (A) any substance defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," or "air pollutant" in (I) the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. §9601, et seq., (II) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq., (III) the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §6901, et seq., (IV) the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, et seq., (V) the Clean Air Act, as amended, 42 U.S.C. §7401, et seq., (VI) the Toxic Substances Control Act, as amended, 15 U.S.C. §2601, et seq., (VII) the Clean Water Act, as amended, 33 U.S. Code §1251, et seq., (VIII) the Oil Pollution Act, as amended, 33 U.S.C. §2701, et seq., (IX) California Health & Safety Code ("H&S Code") §25100, et seq. (Hazardous Waste Control), (X) the Hazardous Substance Account Act, as amended, H&S Code §25300, et seq., (XI) the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, as amended, H&S Code §25404, et seq., (XII) H&S Code §25531, et seq. (Hazardous Materials Management), (XIII) the California Safe Drinking Water and Toxic Enforcement Act, as amended, H&S Code §25249.5, et seq., (XIV) H&S Code §25280, et seq. (Underground Storage of Hazardous Substances), (XV) the California Hazardous Waste Management Act, as amended, H&S Code §25170.1, et seq., (XVI) H&S Code §25501, et seq. (Hazardous Materials Response Plans and Inventory), (XVII)

H&S Code §18901, et seq. (California Building Standards), (XVIII) the Porter-Cologne Water Quality Control Act, as amended, California Water Code §13000, et seq., (XIX) California Fish and Game Code §5650-5656 and (XX) or any other federal, state or local laws, ordinances, rules, regulations, court orders or common law related in any way to the protection of the environment, health or safety (collectively, “**Environmental Laws**”); (B) any substance the presence of which at the Property causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of human beings; and (C) any substance the presence of which at the Property or at nearby or adjacent properties could constitute a trespass. In addition to the foregoing, to the extent not already included therein, the term “Hazardous Materials” also means (I) asbestos (including asbestos-containing materials); (II) flammable, explosive, infectious, carcinogenic, mutagenic, or radioactive materials; (III) petroleum or any substance containing or consisting of petroleum hydrocarbons (including gasoline, diesel fuel, motor oil, waste oil, grease or any other fraction of crude oil); (IV) paints and solvents; (V) lead; (VI) cyanide; (VII) DDT; (VIII) printing inks; (IV) acids; (X) pesticides; (XI) ammonium compounds; (XII) polychlorinated biphenyls; (XIII) radon and radon gas; and (XIV) electromagnetic or magnetic materials, substances or emissions;

(viii) Any easements and/or access rights affecting the Property;

(ix) The Leases and all matters in connection therewith, including the ability of Tenant to pay the rent and the economic viability of any Tenants;

(x) The financial condition of the Property, including lease income and expenses;

(xi) Any contracts and other documents or agreements affecting the Property; and

(xii) Any other matter of significance affecting the Property.

**15. Property Condition Waiver.** Following the Close of Escrow, Buyer waives its right to recover from Seller, and the trustees, members, managers, directors, officers, officials, partners, limited partners, employees, agents and predecessors of Seller, and the contractors, subcontractors, architects, engineers and consultants involved in the design and construction of the Building and other improvements located on or serving the Property (collectively, “**Seller’s Representatives**”), and hereby releases Seller and Seller’s Representatives from, any and all damages, losses, liabilities, costs or expenses whatsoever (including attorneys’ fees and costs) and claims therefor, whether direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way arising out of or connected with (i) the physical condition of the Property, (ii) the failure of the Building or other improvements and components of the Property to comply with any law or regulation applicable thereto, and (iii) the environmental condition of the Property. The foregoing waiver and release shall exclude only those losses, liabilities, damages, costs or expenses, and claims therefor, arising from or attributable to (x) a material matter actually known to Seller (excluding constructive notice) and (1) not disclosed to Buyer and (2) not discovered by Buyer prior to the Close of Escrow, and (y) any breach by Seller of its express representations or warranties under this Agreement. In

connection with foregoing waiver and release, Buyer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.”

---

Buyer's Initials

**16. Seller's Representations and Warranties.** In consideration of Buyer entering into this Agreement, Seller makes the representations and warranties set forth in this Section 16. For the purpose of this Agreement, without creating any personal liability on behalf of such individual, usage of “to Seller’s actual knowledge,” or words to such effect, shall mean the present, actual knowledge of Leslie Little, Assistant City Manager for Community Development of the City of Morgan Hill, excluding constructive knowledge or duty of inquiry, existing as of the Effective Date. In the event that Buyer, prior to Close of Escrow, becomes aware, from Seller or otherwise, of any inaccuracy or omission in the disclosures, information, or representations previously provided to Buyer by Seller or its consultants or agents, which will have a material, adverse impact on Buyer, the Property or the intended use of the Property, Buyer, as its sole option and remedy, may either (i) terminate this transaction and receive a refund of its Deposit, thereby waiving any claims or actions that Buyer may have against Seller as a result of such inaccuracy or omission, or (ii) proceed with the Close of Escrow hereunder, thereby waiving any rights that Buyer may have against Seller as a result of such inaccuracy or omission. Buyer agrees that, under no circumstances, shall Buyer be entitled to purchase the Property hereunder and then bring any claim or action against Seller for damages as a result of such inaccuracy or omission, except if such inaccuracy or omission is based on fraud or intentional misrepresentation by Seller.

(a) Seller's Authority. Seller is (or by the Close of Escrow will be) the sole owner of fee title to the Property and has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby in the execution, delivery and performance of this Agreement. Furthermore, the execution and delivery of this Agreement has been duly authorized and no other action by Seller is required in order to make it a valid and binding contractual obligation of Seller. The individual(s) executing this Agreement on behalf of Seller are authorized to do so.

(b) No Prior Transfers. Seller has not previously sold, transferred or conveyed the Property, or granted to any other person or entity any right or interest in all or any part of the Property and Seller has not entered into any executory contracts for the sale of all or any part of the Property (other than this Agreement), nor do there exist any rights of first refusal or options to purchase the Property, other than this Agreement.

(c) Leases. Except with respect to the Leases, to the Seller’s present actual knowledge, there are no leases or other agreements (whether oral or written) affecting or relating

to the rights of any party with respect to the possession of the Property or any portion thereof which will be in effect after Close of Escrow.

(d) Hazardous Materials. Except as disclosed in the Documents and Materials, to the actual knowledge of Seller, the Property is not, as of the date of the Effective Date of this Agreement, in violation of any federal, state or local law, ordinance or regulation relating to Hazardous Materials (as defined herein), industrial hygiene or the environmental conditions on, under or about the Property including, but not limited to, soil and ground water condition. [City staff to confirm accuracy]

**17. Buyer's Representations and Warranties.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following representations and warranties, each of which is material and is being relied upon by Seller (the continued truth and accuracy of which constitutes a condition precedent to Seller's obligations hereunder):

(a) Buyer's Authority. Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby in the execution, delivery and performance of this Agreement and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement. The individual(s) executing this Agreement on behalf of Buyer are authorized to do so.

(b) Enforceability. This Agreement and all documents required hereby to be executed by Buyer are and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms.

(c) Conflicting Documents. Neither the execution and delivery of this Agreement and the documents and instruments referenced herein, nor the occurrence of the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement and the documents and instruments referenced herein conflict with or result in the materials breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Buyer is a party.

(d) No Side Agreements or Representations. Buyer represents, warrants and covenants to Seller that Buyer has entered into this Agreement based upon its rights and intentions to independently inspect the Property. Except as specifically provided in Section 16 of this Agreement, Seller makes no representation or warranty regarding the condition of the Property, its past use, or its suitability for Buyer's intended use. Buyer will be relying solely upon its own independent inspection, investigation, and analysis of the Property as it deems necessary or appropriate in so acquiring the Property from Seller, including, without limitation, any and all matters concerning the condition, use, sale, development or suitability of the Property.

(e) Notification. Buyer is a licensed real estate broker.

**18. Liquidated Damages.** BUYER RECOGNIZES THAT THE PROPERTY WILL BE REMOVED BY THE SELLER FROM THE MARKET DURING THE EXISTENCE OF THIS AGREEMENT, AND THAT IF THIS TRANSACTION CONCERNING THE PROPERTY IS NOT CONSUMMATED BECAUSE OF BUYER'S DEFAULT, IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE EXTENT OF THE DETRIMENT TO SELLER. THE PARTIES HAVE DETERMINED AND AGREED THAT THE ACTUAL AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY SELLER AS A RESULT OF ANY SUCH DEFAULT IS DIFFICULT OR IMPRACTICABLE TO DETERMINE AS OF THE DATE OF THIS AGREEMENT AND THAT THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE AMOUNT OF SUCH DAMAGES. FOR THESE REASONS, THE PARTIES AGREE THAT IF THE PURCHASE AND SALE IS NOT CONSUMMATED BECAUSE OF BUYER'S DEFAULT, THE DEPOSIT SHALL BE FORFEITED TO SELLER AS LIQUIDATED DAMAGES. NOTHING CONTAINED HEREIN SHALL IN ANY MANNER LIMIT THE AMOUNT OF DAMAGES OBTAINABLE PURSUANT TO AN ACTION UNDER ANY HOLD HARMLESS, DEFENSE OR INDEMNIFICATION PROVISION SET FORTH IN THIS AGREEMENT OR REASONABLE ATTORNEYS' FEES RECOVERABLE PURSUANT TO ANY ACTION UNDER A HOLD HARMLESS, DEFENSE OR INDEMNIFICATION SET FORTH IN THIS AGREEMENT.

Seller \_\_\_\_\_

Buyer \_\_\_\_\_

**19. Damage or Condemnation Prior to Closing.** Seller shall promptly notify Buyer of any casualty to the Property or any condemnation proceeding considered or commenced prior to the Close of Escrow. If any such damage or proceeding relates to or may result in the loss of any "material portion" (as defined herein) of the Property, Seller or Buyer may, each at its option, elect either to (i) terminate this Agreement, in which event the Deposit, including all accrued interest, shall be returned to Buyer and neither party shall have any further rights or obligations hereunder, or (ii) continue the Agreement in effect, in which event upon the Close of Escrow, Buyer shall be entitled to any compensation, award, or other payments or relief resulting from such casualty or condemnation proceedings. The term "**material portion**" shall mean damages greater than One Hundred Thousand and 00/100<sup>th</sup> Dollars (\$100,000.00).

**20. Notices.** All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section 20, shall be addressed to the parties in the manner set forth below, and shall be delivered by certified mail return receipt requested, or by overnight courier or delivery service with signature required, to the addresses set forth below, or to such other place as any party may similarly in writing designate to the others. Notices shall be effective three business days after mailing by certified mail, or upon delivery by overnight courier or delivery service (or, if delivery is not during regular business hours on a business day, then on the next business day).

The addresses of the parties to receive notices are as follows:

TO SELLER:

City of Morgan Hill Successor Agency  
17575 Peak Avenue  
Morgan Hill, CA 95037

Attention: Leslie Little  
 Assistant City Manager  
 for Community Development  
 Email: Leslie.Little@morganhill.ca.gov  
 Facsimile: (408) \_\_\_\_\_

WITH A COPY TO:

Burke, Williams & Sorensen, LLP  
 1901 Harrison Street, Ninth Floor  
 Oakland, CA 94612  
 Attention: Gerald J. Ramiza and David A. Rosenthal  
 Email: jramiza@bwsllaw.com and  
 droenthal@bwsllaw.com  
 Facsimile: (510) 839-9104

TO BUYER:

Lonestar Development, LLC  
 300 Santana Row, Fifth Floor  
 San Jose, CA 95128  
 Attention: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_

WITH A COPY TO:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attention: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_

TO ESCROW HOLDER:

Chicago Title Insurance Company  
 675 N First Street  
 San Jose, CA 95112  
 Attention: Sherri Keller  
 Email: Sherri.Keller@ctt.com  
 Facsimile: (408) 282-1404

**21. Brokers.** Each of Seller and Buyer represent that it has not engaged nor is it aware of any person entitled to any brokerage commission or finder's fee in connection with this transaction. Each party agrees to indemnify the other party against any claim asserted against or adjudged against the other party, for any brokerage commission or finder's fee or any like compensation occasioned by or as a result of any act or omission of each such party, including all attorney's fees, costs, expenses and any other fees incurred by, charged against or adjudicated against, the other party, whether or not suit is filed, which are related to this indemnity agreement or enforcement thereof.

**22. Assignment.** Buyer shall not assign its right, title or interest in this Agreement to any other party without the prior written consent of Seller, which determination may be withheld



in Seller's sole and absolute discretion. Buyer may, however, assign this Agreement and all of Buyer's rights under it to an entity in which Buyer has a controlling ownership interest, subject to the terms of this Agreement, provided that (i) such assignee assumes in a writing reasonably acceptable to Seller, all of the obligations of Buyer, (ii) Seller receives prior written notice of such assignment, (iii) the original Buyer remains fully liable for all obligations under this Agreement, and (iv) the assignee agrees to execute all documents and perform all obligations of Buyer as if such assignee were the original Buyer under this Agreement.

### **23. Miscellaneous.**

(a) Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(b) Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

(c) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the grantees, transferees, successors and permitted assigns of the parties hereto.

(d) Attorneys' Fees. If either party commences an action against the other to interpret or enforce any of the terms of this Agreement or because of the breach by the other party of any of the terms hereof, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses and court costs and other costs of action incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment.

(e) Entire Agreement. This Agreement (including all Recitals and Exhibits attached hereto), is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

(f) Time of Essence. Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions

hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

(g) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties to create the relationship of principal and agent, a partnership, joint venture or any other association between Buyer and Seller.

(h) Construction/Exhibits. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to paragraphs, Sections, subparagraphs and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated herein by this reference.

(i) Governing Law/Venue. The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California. The parties hereto agree that the exclusive jurisdiction and venue for any legal action arising out of or relating to this Agreement shall be in the applicable Court of Santa Clara County, California, or, in the alternative, in cases where Federal jurisdiction is available, in the United States District Court for the Northern District of California.

(j) Days of Week. A “business day,” as used herein, shall mean any day other than a Saturday, Sunday or holiday, as defined in Section 6700 of the California Government Code. If any date for performance herein falls on a day other than a business day, the time for such performance shall be extended to 5:00 p.m. on the next business day.

(k) Possession of Property. Subject to the rights of Tenants under the Leases and to the Approved Conditions of Title, Buyer shall be entitled to the possession of the Property immediately following the Close of Escrow.

(l) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

(m) Facsimile Signatures. In order to expedite the transaction contemplated herein, facsimile signatures may be used in place of original signatures on this Agreement. Seller and Buyer intend to be bound by the signatures on the facsimile document, are aware that the other party will rely on the facsimile signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the use of a facsimile signature.

(n) Termination Documents. If this Agreement is terminated prior to the Close of Escrow for any reason, Buyer shall deliver to Seller the following documents and materials (collectively hereinafter referred to as the “**Termination Documents**”): (i) the Documents and

Materials delivered to Buyer by Seller, and (ii) at no cost and without warranty as to correctness, copies of all reports, studies, maps and engineering studies that were generated by third parties for Buyer with respect to the Property, including, but not limited to, all environmental reports, surveys, marketing reports, geotechnical reports, lot studies and improvement plans. It is understood and agreed that, with respect to any provision of this Agreement which refers to the termination of this Agreement and the return of the Deposit to Buyer, such Deposit shall not be returned to Buyer unless and until Buyer has fulfilled its obligation to return to Seller the Termination Documents.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

**BUYER:**

**SELLER:**

LONESTAR DEVELOPMENT, LLC, a  
\_\_\_\_\_ limited liability company

SUCCESSOR AGENCY TO THE FORMER  
MORGAN HILL REDEVELOPMENT  
AGENCY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Renee Gurza, City Attorney

**Schedule of Exhibits**

**Exhibit A**

**Legal Description of Property**

**Exhibit B**

**Grant Deed**

**Schedule 1**

Legal Description of Property

**Exhibit C**

**Assignment of Leases**

**Schedule 1**

Leases Affecting the Property

**Schedule 2**

Deposits

**Exhibit D**

**List of Documents and Materials**

**RECEIPT BY ESCROW HOLDER**

Escrow Holder hereby acknowledges receipt of a fully executed copy of the foregoing Agreement on this date and agrees to abide by the escrow instructions contained therein.

Escrow Holder:

Chicago Title Insurance Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Escrow Officer

Effective Date: \_\_\_\_\_

**EXHIBIT A**

**Legal Description of Property**

The land referred to in this Agreement is situated in the State of California, County of Santa Clara, City of Morgan Hill, and is described as follows:

*[To be inserted by Escrow Holder]*

**EXHIBIT B**

**Grant Deed**

RECORDING REQUESTED BY:

WHEN RECORDED MAIL  
TO AND MAIL TAX STATEMENTS TO:

---

---

(Above Space for Recorder's Use Only)

**GRANT DEED**

To be recorded without fee per Government Code Section 27383

The undersigned grantor declares:  
Exempt from Documentary Transfer Tax pursuant  
to Section 11922 of the Revenue and  
Taxation Code, as amended  
County of Santa Clara

WHEREAS, the Property (as defined below) was at one time owned by the Morgan Hill Redevelopment Agency, a political subdivision of the State of California ("MHRA"); and

WHEREAS, as part of the 2011 Budget Act, including AB1X 26, as subsequently amended, the California Legislature dissolved all redevelopment agencies throughout the State of California, including MHRA, as of February 1, 2012; and

WHEREAS, as part of a settlement with the California State Controller's Office ("SCO") and others, and consistent with AB 1484, the Property was transferred to the undersigned Grantor; and

WHEREAS, the Property transfer contemplated by this Deed is consistent with Grantor's Long Range Property Management Plan, submitted to and approved by the Grantor's Oversight Board and the State of California Department of Finance.

NOW, THEREFORE,

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, THE SUCCESSOR AGENCY TO THE FORMER MORGAN HILL REDEVELOPMENT AGENCY ("Grantor"), hereby grants to LONESTAR DEVELOPMENT, LLC, a \_\_\_\_\_ limited liability company, that certain real property in the County of Santa Clara, State of California, described on Schedule 1 ("Property") which is attached hereto, subject to all matters of title or of record or any matters that would be disclosed by an accurate survey.

IN WITNESS WHEREOF, the Grantor has caused this Deed to be executed as of the \_\_\_\_  
day of \_\_\_\_\_, 2015.

SUCCESSOR AGENCY TO THE FORMER MORGAN HILL  
REDEVELOPMENT AGENCY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(Name of Notary)

notary public, personally appeared \_\_\_\_\_  
 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
 subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
 in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
 the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)

**SCHEDULE 1**

**Legal Description of Property**

The land referred to in this Agreement is situated in the State of California, County of Santa Clara, City of Morgan Hill, and is described as follows:

*[To be inserted by Escrow Holder]*

**EXHIBIT C****Assignment of Leases**

THIS ASSIGNMENT OF LEASES (“**Assignment**”) is made this \_\_\_\_ day of \_\_\_\_\_ 2015, entered into by and between THE SUCCESSOR AGENCY TO THE FORMER MORGAN HILL REDEVELOPMENT AGENCY (“**Assignor**”), and LONESTAR DEVELOPMENT, LLC a \_\_\_\_\_ limited liability company (“**Assignee**”).

**RECITALS:**

A. Assignor and Assignee entered into that certain Agreement of Purchase and Sale and Initial Escrow Instructions dated as of \_\_\_\_\_, 2015 (“**Agreement**”), whereby Assignor has agreed to sell to Assignee, and Assignee has agreed to purchase from Assignor, certain Property commonly known as Site 2 (2<sup>nd</sup> Street and Monterey Road), Morgan Hill, California, all as more fully described in the Agreement. Capitalized terms not otherwise defined in this Assignment shall have the same meaning in the Agreement.

B. The Agreement obligates Assignor to assign, to the extent assignable, to Assignee tenant leases and security deposits related to the Property.

C. By Grant Deed dated as of the date hereof, to be recorded in the Official Records of Santa Clara County, California, with the delivery hereof, Assignor conveyed the Property, with all improvements thereon, to the Assignee.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. **Assignment of Leases.** Assignor hereby sells, assigns, transfers and conveys unto Assignee, and its successors and assigns, all of Assignor’s right, title and interest in and to the Leases on the schedule attached hereto and incorporated herein as Schedule 1. By execution hereof, Assignee agrees to assume and be bound by Assignor’s obligations accruing on or after the date hereof under the Leases.

2. **Assignment of Deposits.** Assignor hereby sells, assigns, transfers and conveys unto Assignee, and its successors and assigns, all of Assignor’s right, title and interest in and to the refundable security, cleaning and all other refundable deposits, including but not limited to those on the attached Schedule 2 (“**Deposits**”), together with all earned interest thereon to the date hereof which may be required by law or by the Leases to be accrued for the benefit of the tenants and the rights and obligations of Assignor thereunder.

3. **Disclaimer of Lease Terms.** ASSIGNEE ACKNOWLEDGES AND AGREES, BY ITS ACCEPTANCE HEREOF, THAT, EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, ASSIGNOR HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS,

AGREEMENTS, OR GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE NATURE, QUALITY, OR CONDITION OF THE LEASES, THE INCOME TO BE DERIVED THEREFROM, OR THE ENFORCEABILITY THEREOF.

4. **Governing Law.** This Assignment and all other instruments referred to herein shall be governed by, and shall be construed in accordance with, the laws of the State of California.

5. **Successors and Assigns.** This Assignment and the terms and provisions hereof shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of Assignor and Assignee.

6. **Survival.** The terms and conditions of this Assignment shall survive the Close of Escrow.

7. **Indemnification.** Assignee shall indemnify, defend (with counsel satisfactory to Assignor) and hold Assignor, its elected officials, officers, employees and agents harmless from and against any and all litigation, loss cost, damage, claim, demand, expense or liability whatsoever (including without limitation, reasonable attorneys' fees, charges and costs) (collectively, "**Damages**") arising out of any Lease which Damages occur or arise after the effective date of this Assignment.

8. **Counterparts.** To facilitate execution, this Assignment may be executed in as many counterparts as may be required. It shall not be necessary that the signatures on behalf of all parties appear on each counterpart hereof. All counterparts hereof shall collectively constitute a single agreement.

9. **Covenants of Further Assurances.** Assignor and Assignee each agree to execute such other documents and perform such other acts as may be necessary or desirable to effectuate this Assignment.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the dates set forth below.

**ASSIGNEE:**

LONESTAR DEVELOPMENT, LLC, a  
\_\_\_\_\_ limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ASSIGNOR:**

SUCCESSOR AGENCY TO THE FORMER  
MORGAN HILL REDEVELOPMENT  
AGENCY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE C-1**

**Leases Affecting the Property**

1. Royal Clothiers
2. Tryst Fashions

**SCHEDULE C-2**

**Deposits**

1. Royal Clothiers
2. Tryst Fashions

**EXHIBIT D**

**List of Documents and Materials**

1. The original or copies of the “as-built” working architectural and engineering plans and specifications for the Building.
2. Copies of all permits and certificates of occupancy issued for the Building.
3. Copies of any warranty agreements covering the Building or any equipment therein.
4. Such additional documents as Buyer may reasonably request concerning the Property or the Building.
5. A copy of Seller’s current rent rolls for the property including any delinquent payments due.

Property as used herein, means the subject Property and not any surrounding Property. Buyer may not rely on any reports or studies because they are not issued in Buyer’s name.



## RESOLUTION NO. 15-

**A RESOLUTION OF THE SUCCESSOR AGENCY TO THE FORMER MORGAN HILL REDEVELOPMENT AGENCY, APPROVING SALE AND ASSIGNMENT AGREEMENTS FOR THE DISPOSITION OF DOWNTOWN OPPORTUNITY SITE 2 (SOUTHEAST CORNER OF SECOND STREET AND MONTEREY ROAD), SITE 3 (DEPOT STREET BETWEEN SECOND AND THIRD STREET) AND SITE 4 (SOUTHEAST CORNER OF THIRD STREET AND MONTEREY ROAD) AND ESTABLISHING A PRICE AND METHOD OF SALE FOR SITE 1A (DUPLEX – 50 E. FIRST STREET)**

**WHEREAS**, pursuant to Parts 1.8 and 1.85 of the California Health and Safety Code, as amended by California Assembly Bill 1484 and as may have been further amended to date, the former Morgan Hill Redevelopment Agency was dissolved and the City of Morgan Hill (“**City**”) succeeded in interest as the successor agency to the Former Agency (“**Successor Agency**”); and

**WHEREAS**, in August of 2014, the Successor Agency began the process of disposing of former redevelopment agency assets in a manner consistent with the Long Range Property Management Plan (LRPMP) by broadcasting a Request for Qualifications/Proposals (“**RPQ/P**”); and

**WHEREAS**, on January 5, 2015, the Successor Agency received proposals in response to the RFQ/P for the development and sale of the former Redevelopment Agency Downtown Opportunity Sites, known as Sites 1, 1a, 2, 3 and 4; and

**WHEREAS**, on February 18, 2015, the Successor Agency, recommended: (i) the sale of certain property known as the Royal Clothiers/Tryst Building property, located at the Southeast corner of Second Street and Monterey Road (“**Site 2**”) to Lonestar Development, LLC for \$881,280, (ii) the transfer and assignment of Successor Agency’s option to acquire certain property known as the Booksmart property, located at Depot Street between Second and Third Streets (“**Site 3**”) to City Ventures, Inc. for \$100,000, and (iii) the sale of certain property known as Site 4, located at the Southeast corner of Third Street and Monterey Road (“**Site 4**”) to the City of Morgan Hill for \$525,000; and

**WHEREAS**, on February 25, 2015, the Morgan Hill Oversight Board concurred with the above recommendations of the Successor Agency; and

**WHEREAS**, in response to the recommendations and direction provided by the Successor Agency and Oversight Board, Successor Agency staff have negotiated and drafted (i) an Agreement of Purchase and Sale and Initial Escrow Instructions (Site 2) between the Successor Agency, as seller, and Lonestar Development, LLC, as buyer, attached hereto as Exhibit A (“**Site 2 Agreement**”), (ii) an Agreement of Purchase and Sale of Option and Initial Escrow Instructions (Site 3 Option Booksmart) between the Successor Agency, as seller/assignor, and City Ventures, Inc., as buyer/assignee, attached hereto as Exhibit B (“**Site 3 Agreement**”), and (iii) an Agreement of Purchase and Sale (Site 4) between the Successor Agency, as seller, and the City of Morgan Hill, as buyer, attached hereto as Exhibit C (“**Site 4**”)

**Agreement”** and, collectively with the Site 2 Agreement and Site 3 Agreement, the **“Agreements”**); and

**WHEREAS**, on March \_\_, 2015, by Resolution No. \_\_, the Planning Commission reviewed the terms of the above proposed purchase and sale and assignment transactions and determined them to be consistent with the City of Morgan Hill General Plan; and

**WHEREAS**, the Successor Agency desires to retain Smith Commercial Management as non-exclusive broker to list and sell the residential duplex located at 50 E. First Street (**“Site 1a”**) for full fair market value, but not less than \$625,000, in accordance with the non-exclusive listing agreement (**“Listing Agreement”**) attached hereto as Exhibit D; and

**WHEREAS**, the consideration by the Successor Agency of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the Successor Agency meeting agenda on the date set forth in the Staff Report, or to such date that the Successor Agency may have continued or deferred consideration of this Resolution, and on such date the Successor Agency conducted a duly noticed public meeting at which meeting the Successor Agency provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution.

**NOW, THEREFORE, THE SUCCESSOR AGENCY TO THE FORMER MORGAN HILL REDEVELOPMENT AGENCY DOES HEREBY FIND, DETERMINE, RESOLVE AND ORER AS FOLLOWS:**

**SECTION 1.** The Successor Agency does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

**SECTION 2.** The Successor Agency hereby determines based on evidence in the record, including the extensive outreach and marketing efforts undertaken in connection with the RFQ/P, that the purchase prices to be paid by the buyer of Site 2, the assignee/buyer of the option to purchase Site 3, and the buyer of Site 4 pursuant to the respective Agreements, represent the full fair market values of Sites 2 and 4 and the option to purchase Site 3 as of the date of approval of this Resolution.

**SECTION 3.** The Successor Agency does hereby further finds the actions authorized herein to be consistent with the project evaluated in the Final Master Environmental Impact Report (**“EIR”**), State Clearinghouse #2008012025, certified in September of 2009, by City in connection with approval of the Morgan Hill Downtown Specific Plan and that 1) there are no substantial changes to the project which would result in the need for major revisions to that EIR, 2) there are no substantial changes with regard to the circumstances surrounding the proposed action which would require major revisions to that EIR, and 3) no substantial new information exists which was not previously known which would show that the project has new significant environmental impacts, the project’s identified impacts are substantially more severe than previously disclosed, or alternatives or mitigation measures previously found to be infeasible are in fact feasible and/or would reduce significant environmental impacts more than previously disclosed, which would require that a new subsequent or supplemental EIR be prepared under section 15162 of the CEQA Guidelines. The Successor Agency hereby finds that

approval of the Agreements is exempt from the requirements of the California Environmental Quality Act (“CEQA”) because these actions do not constitute approval of a project. Approval of the agreements neither commit the City to approving a project nor constitute an entitlement for use of a project, therefore these actions are not approvals of projects, as defined by Public Resources Code Sections 21065 and 21080 or CEQA Guidelines Sections 15352 and 15378.

**SECTION 4.** Subject to the conditions set forth in the Agreements, the Successor Agency hereby approves the sale of Site 2 to Lonestar Development LLC, the sale of the option to purchase Site 3 to City Ventures, Inc. and the sale of Site 4 to the City of Morgan Hill, and authorizes the City Manager and City Clerk to execute the Agreements substantially in the forms attached as Exhibits A, B, and C respectively, subject to any minor conforming, technical or clarifying changes approved by the City Attorney. The City Manager and City Clerk are authorized and directed to take such further actions and execute such documents on behalf of the Successor Agency as are necessary to carry out the transactions contemplated by the Agreements, including, without limitation, grant deeds and assignment agreements.

**SECTION 4.** Subject to the condition set forth in the Listing Agreement, the Successor Agency hereby approves the listing and sale of Site 1a by Smith Commercial Management and authorizes the City Manager and City Clerk to execute the Listing Agreement substantially in the form attached as Exhibit D, subject to any minor conforming, technical or clarifying changes approved by the City Attorney, and such further agreements and documents, including, without limitation, agreements for purchase and sale, deeds and assignment agreements with respect to sale of Site 1a, all on terms acceptable to the City Attorney; provided the purchase price for sale of Site 1a is not less than \$625,000.

**PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2015, AT A REGULAR MEETING OF THE SUCCESSOR AGENCY TO THE FORMER MORGAN HILL REDEVELOPMENT AGENCY, BY THE FOLLOWING VOTE:**

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
\_\_\_\_\_, Chair

☐ CERTIFICATION ☐

**I, Irma Torrez, Clerk of the Board to the Successor Agency to the City of Morgan Hill, California,** do hereby certify that the foregoing is a true and correct copy of Resolution No. XXXX , adopted by the Successor Agency of the Former Redevelopment Agency of the City of Morgan Hill at the \_\_\_\_\_ [*Special or Regular*] meeting held on \_\_\_\_\_, 2015.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**Irma Torrez, CLERK OF THE BOARD**

**EXHIBIT A**

**SITE 2 AGREEMENT OF PURCHASE AND SALE**

*To be inserted*

**EXHIBIT B**

**SITE 3 AGREEMENT OF PURCHASE AND SALE OF OPTION**

*To be inserted*

**EXHIBIT C**

SITE 4 AGREEMENT OF PURCHASE AND SALE

*To be inserted*

**EXHIBIT D**

SITE 1a NON-EXCLUSIVE LISTING AGREEMENT

*To be inserted*



**AGREEMENT FOR PURCHASE AND SALE OF REAL  
PROPERTY (INCLUDING ESCROW INSTRUCTIONS)  
(Site 4 – Third Street and Monterey)**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (the “**Agreement**”) is entered into as of \_\_\_\_\_, 2015, (the date of last execution of this Agreement by the parties as indicated on the signature page) by and between the CITY OF MORGAN HILL, a municipal corporation (the “**Purchaser**”), and SUCCESSOR AGENCY TO THE FORMER MORGAN HILL REDEVELOPMENT AGENCY (the “**Seller**”).

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

**1. Agreement to Sell and Purchase.** Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, upon the terms and for the consideration set forth in this Agreement, that certain real property, together with any buildings, fixtures and appurtenant improvements thereon, situated in the City of Morgan Hill, County of Santa Clara, State of California, consisting of approximately Two Thousand Eighty and 00/100th (2,080) gross square feet (approximately Thirty-Five One-Hundredth (0.35) acres), also known as Site 4 (3rd Street and Monterey Road) (Assessor’s Parcel Nos. 726-13-040, 726-13-039 and 726-13-038), as more particularly described on Exhibit A attached hereto and incorporated herein (“**Property**”).

**2. Purchase Price.** The total purchase price for the Property shall be Five Hundred Twenty-Five Thousand and 00/100th Dollars (\$525,000.00) (the “**Purchase Price**”). Purchaser shall pay the Purchase Price by depositing into Escrow, on or before the date for close of Escrow, immediately available funds in the amount of the Purchase Price.

**3. Conditional Effectiveness of Agreement.**

3.1 This Agreement shall become effective only upon the satisfaction of each of the following conditions (collectively, the “**Conditions Precedent to Effectiveness**”) within the time period set forth herein:

(a) The Oversight Board to the Successor Agency to the former Morgan Hill Redevelopment Agency shall have approved this Agreement; and

(b) Unless expressly waived by both parties in writing, the State of California Department of Finance shall have approved or been deemed to have approved the Oversight Board’s approval as provided in (a) above.

3.2 Seller shall use diligent good faith efforts to cause the foregoing Conditions Precedent to Effectiveness to be satisfied on or before the Outside Date (defined below); provided, however, if, notwithstanding Seller’s good faith diligent efforts, the Conditions Precedent to Effectiveness have not been satisfied on or before July 31, 2015, or such later date as the parties may mutually agree each in its sole discretion (the “**Outside Date**”), this Agreement shall automatically terminate at 5:00 pm on the Outside Date. If this Agreement is terminated pursuant to this Section 3, Seller and Purchaser will have no further obligations or rights to one another under this Agreement.

4. **Conveyance of Title.** Seller agrees to convey to Purchase, by Grant Deed, marketable fee simple title to the Property, free and clear of all: recorded and unrecorded liens and encumbrances (other than taxes or assessments); covenants, conditions, restrictions and reservations of records; and easements created by Purchaser.

5. **Escrow.** Purchaser and Seller have opened or shall open an escrow (the “**Escrow**”) in accordance with this Agreement at Chicago Title Insurance Company, 675 N First Street, San Jose, CA 95112 (Attention: Christina Molotla) (the “**Escrow Agent**”). This Agreement, together with the escrow instructions prepared by Escrow Agent and executed by Purchaser and Seller, constitutes the joint escrow instructions of Purchaser and Seller, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this Escrow in the shortest possible time.

5.1 **Grant Deed.** Prior to the close of Escrow, Seller shall execute, acknowledge and deliver into Escrow a Grant Deed substantially in form attached hereto as Exhibit B (the “**Grant Deed**”). A Certificate of Acceptance shall be executed, acknowledged and delivered into Escrow by Purchaser on or before the close of Escrow. Purchaser and Seller agree to deposit with Escrow Agent any additional instruments as may be necessary to complete this transaction.

6. ***[Intentionally Omitted]***

7. **Escrow Agent Authorization.** Escrow Agent is authorized to, and shall:

7.1 **Pay and Charge Seller.** Pay and charge Seller for any amount necessary to place title in the condition necessary to satisfy Section 4 of this Agreement.

7.2 **Pay and Charge Purchaser.** Pay and charge Purchaser for any Escrow fees, recording fees and other costs and expenses of Escrow payable under Section 7.7, below.

7.3 **Disbursement.** Disburse funds, record the Grant Deed and Certificate of Acceptance, and deliver the title policy to Purchaser, when conditions of the Escrow have been fulfilled by Purchaser and Seller.

7.4 **Close of Escrow.** The term “**close of Escrow,**” if and where written in these instructions, shall mean the date the Grant Deed and other necessary instruments of conveyance are recorded in the office of the Santa Clara County Recorder.

7.5 **Time Limits.** All time limits within which any matter specified is to be performed may be extended by mutual agreement of the parties. Any amendment of, or supplement to, any instructions must be in writing.

7.6 **Time of the Essence.** TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND ESCROW IS TO CLOSE ON OR BEFORE August 1, 2015. If this Escrow is not in condition to close by such date, then any party who has fully complied with this Agreement may, in writing, demand the return of its money or property; provided, however, no demand for return shall be recognized until five (5) days after Escrow Agent shall have mailed copies of demand to all other parties at the respective addresses shown below, and if any objections are raised within such five (5) day period, Escrow Agent is authorized to hold all

money, papers and documents until instructed by a court of competent jurisdiction or mutual instructions.

7.7 Escrow Fees, Charges and Costs. Purchaser agrees to pay all Purchaser's and Seller's usual fees, charges, and costs which arise in this Escrow.

7.8 Transfer Taxes. No transfer tax shall be due because Purchaser is a public entity.

8. **Possession and Disposition of Personal Property.** Seller shall, prior to the close of Escrow, remove or otherwise dispose of all personal property located on the Property. All personal property remaining on the Property after the Closing shall become the property of Purchaser and Purchaser may dispose of same without liability as it alone sees fit, and Seller shall be liable for the costs of removal which are incurred by the Purchaser. Purchaser shall not be liable for any loss of or damage to the personal property remaining on the Property, regardless of when loss or damage occurs.

9. **Warranties, Representations, and Covenants of Seller.** Seller hereby warrants, represents, and/or covenants to Purchaser that:

9.1 Pending Claims. To Seller's actual knowledge, there are no actions, suits, claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.

9.2 Encroachments. To Seller's actual knowledge, there are no encroachments onto the Property by improvements on any adjoining property, nor do any buildings or improvements located on the Property encroach on other properties.

9.3 Definition of Actual Knowledge. For the purpose of this Agreement, without creating any personal liability on behalf of any individual, usage of "to Seller's actual knowledge," or words to such effect, shall mean the present, actual knowledge of Leslie Little, Assistant City Manager for Community Development of the City of Morgan Hill, excluding constructive knowledge or duty of inquiry, existing as of the Effective Date. In the event that Purchaser, prior to close of Escrow, becomes aware, from Seller or otherwise, of any inaccuracy or omission in the disclosures, information, or representations previously provided to Purchaser by Seller or its consultants or agents, which will have a material, adverse impact on Purchaser, the Property or the intended use of the Property, Purchaser, as its sole option and remedy, may either (i) terminate this transaction, thereby waiving any claims or actions that Purchaser may have against Seller as a result of such inaccuracy or omission, or (ii) proceed with the close of Escrow hereunder, thereby waiving any rights that Purchaser may have against Seller as a result of such inaccuracy or omission. Purchaser agrees that, under no circumstances, shall Purchaser be entitled to purchase the Property hereunder and then bring any claim or action against Seller for damages as a result of such inaccuracy or omission, except if such inaccuracy or omission is based on fraud or intentional misrepresentation by Seller.

9.4 Seller's Title. Until the close of Escrow, Seller shall not do anything which would impair Seller's title to any of the Property.

9.5 Right to Possession. No person or entity other than Seller has the right to possess the Property or any portion of it, as of the date of this Agreement.

**10. Full and Complete Settlement for Fee Interest.** The total compensation to be paid by Purchaser to Seller is in consideration for all of Seller's interest in the Property and any rights or obligations which exist or may arise out of the acquisition of the Property for public purposes, including without limitation, Seller's fee interest in the land and any improvements and fixtures and equipment located thereon, improvements pertaining to the realty (if any), severance damages, relocation assistance, any alleged pre-condemnation or inverse condemnation damages, loss of business goodwill (if any), costs, interest, attorney's fees, and any claim whatsoever of Seller and Seller's Parties (defined below) which might arise out of or relate in any respect to the acquisition of the Property by the Purchaser.

**11. Broker's Commission.** Seller and Purchaser each warrants and represents that it has not engaged the services of any agent, finder or broker in connection with the transaction which is the subject of this Agreement, and that it is not liable for any real estate commissions, broker's fees or finder's fees which may accrue by means of the sale of the Property.

**12. Notices.** All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section 12, shall be addressed to the parties in the manner set forth below, and shall be delivered by certified mail return receipt requested, or by overnight courier or delivery service with signature required, to the addresses set forth below, or to such other place as any party may similarly in writing designate to the others. Notices shall be effective three business days after mailing by certified mail, or upon delivery by overnight courier or delivery service (or, if delivery is not during regular business hours on a business day, then on the next business day).

The addresses of the parties to receive notices are as follows:

If to Seller: City of Morgan Hill Successor Agency  
17575 Peak Avenue  
Morgan Hill, CA 95037  
Attention: Leslie Little  
Assistant City Manager  
for Community Development  
Email: Leslie.Little@morganhill.ca.gov  
Facsimile: (408) \_\_\_\_\_

with a copy to: Burke, Williams & Sorensen, LLP  
1901 Harrison Street, Ninth Floor  
Oakland, CA 94612  
Attention: Gerald J. Ramiza and David A. Rosenthal  
Email: jramiza@bwslaw.com and  
drosenthal@bwslaw.com  
Facsimile: (510) 839-9104

If to Purchaser: City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037  
Attention: Leslie Little  
Assistant City Manager  
for Community Development  
Email: Leslie.Little@morganhill.ca.gov

Facsimile: (408) \_\_\_\_\_

with a copy to:

City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037  
Attention: Renee Gurza  
Assistant City Attorney  
Email: Renee.Gurza@morganhill.ca.gov  
Facsimile: (408) \_\_\_\_\_

**13. Default.** Failure or delay by either party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes a default under this Agreement. The injured party shall give written notice of default to the party in default, specifying the default complained of. The defaulting party shall immediately commence to cure such default and shall diligently complete such cure within ten (10) days from the date of the notice. The injured party shall have the right to terminate this Agreement by written notice to the other party in the event of a default which is not cured within such ten (10) day period.

**14. Entire Agreement.** This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

**15. Governing Law.** This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California without regard to its choice of law principles.

**16. Amendments.** No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by Purchaser and Seller.

**17. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

**18. Binding Upon Successors.** The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.

**19. Cooperation.** Each party agrees to cooperate with the other in the Closing of this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

**PURCHASER:**

CITY OF MORGAN HILL,  
a California municipal corporation

By: \_\_\_\_\_

Name: Steve Rymer

Title: City Manager

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

\_\_\_\_\_, City Clerk

**SELLER:**

SUCCESSOR AGENCY TO THE FORMER  
MORGAN HILL REDEVELOPMENT AGENCY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Executive Director

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

\_\_\_\_\_, Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_

Renee Gurza, City Attorney

**EXHIBIT A**

**Legal Description of Property**

The land referred to in this Agreement is situated in the State of California, County of Santa Clara, City of Morgan Hill, and is described as follows:

*[To be inserted by Escrow Holder]*

APN's 726-13-040  
726-13-039  
726-13-038

**EXHIBIT B****Grant Deed**

RECORDING REQUESTED BY:

City of Morgan Hill

WHEN RECORDED MAIL  
TO AND MAIL TAX STATEMENTS TO:City Clerk, City of Morgan Hill  
1735 Peak Avenue  
Morgan Hill, CA 95037

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(Above Space for Recorder's Use Only)**GRANT DEED**

To be recorded without fee per Government Code Section 27383

The undersigned grantor declares:  
Exempt from Documentary Transfer Tax pursuant  
to Section 11922 of the Revenue and  
Taxation Code, as amended  
County of Santa ClaraWHEREAS, the Property (as defined below) was at one time owned by the Morgan Hill  
Redevelopment Agency, a political subdivision of the State of California ("**MHRA**"); andWHEREAS, as part of the 2011 Budget Act, including AB1X 26, as subsequently  
amended, the California Legislature dissolved all redevelopment agencies throughout the State  
of California, including MHRA, as of February 1, 2012; andWHEREAS, as part of a settlement with the California State Controller's Office ("**SCO**")  
and others, and consistent with AB 1484, the Property was transferred to the undersigned  
Grantor; andWHEREAS, the Property transfer contemplated by this Deed is consistent with Grantor's  
Long Range Property Management Plan, submitted to and approved by the Grantor's Oversight  
Board and the State of California Department of Finance.

NOW, THEREFORE,

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the  
SUCCESSOR AGENCY TO THE FORMER MORGAN HILL REDEVELOPMENT AGENCY  
("**Grantor**"), hereby grants to the CITY OF MORGAN HILL, a California municipal corporation,  
that certain real property in the County of Santa Clara, State of California, described on  
Schedule 1 ("**Property**") which is attached hereto, subject to all matters of title or of record or  
any matters that would be disclosed by an accurate survey.IN WITNESS WHEREOF, the Grantor has caused this Deed to be executed as of the  
\_\_\_ day of \_\_\_\_\_, 2015.



SUCCESSOR AGENCY TO THE FORMER MORGAN HILL  
REDEVELOPMENT AGENCY

By: \_\_\_\_\_  
Steve Rymer, Executive Director

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(Name of Notary)

notary public, personally appeared \_\_\_\_\_  
 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)  
 is/are subscribed to the within instrument and acknowledged to me that he/she/they executed  
 the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the  
 instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the  
 instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)

**SCHEDULE 1**

**Legal Description of Property**

The land referred to in this Agreement is situated in the State of California, County of Santa Clara, City of Morgan Hill, and is described as follows:

*[To be inserted by Escrow Holder]*

APN's 726-13-040  
726-13-039  
726-13-038

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the deed or grant dated \_\_\_\_\_, 2015, from SUCCESSOR AGENCY TO THE FORMER MORGAN HILL REDEVELOPMENT AGENCY (“**Grantor**”) to the CITY OF MORGAN HILL, a California municipal corporation (“**Grantee**”), is hereby accepted by the undersigned officer or agent on behalf of the Grantee pursuant to authority conferred by Resolution No. \_\_\_\_\_, dated \_\_\_\_\_, 2015, and the Grantee consents to recordation thereof by its duly authorized officer.

Date: \_\_\_\_\_, 2015`

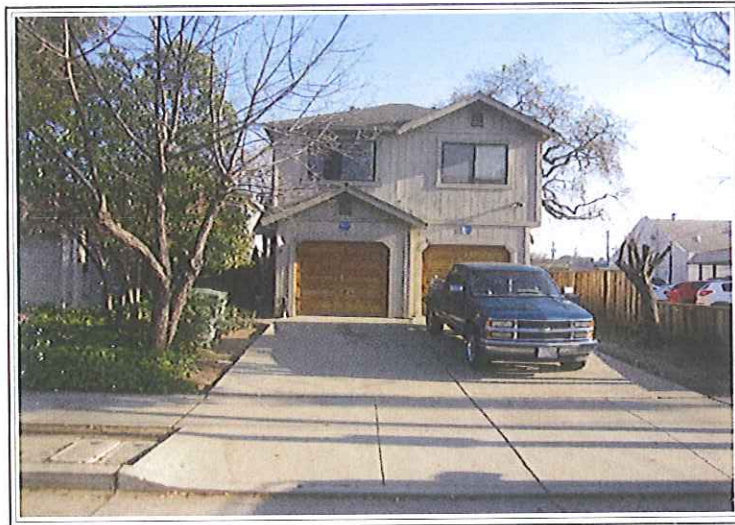
**“Grantee”**  
CITY OF MORGAN HILL, a  
California municipal corporation

\_\_\_\_\_  
Steve Rymer, City Manager

VALBRIDGE PROPERTY ADVISORS / HULBERG & ASSOCIATES, INC.

File No. CA03-15-0090-000 5

APPRAISAL OF



RESIDENTIAL DUPLEX

LOCATED AT:

50 East 1st Street  
Morgan Hill, CA 95037

CLIENT:

City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037

AS OF:

February 18, 2015

BY:

Nolan S. Tong  
AG040516

## VALBRIDGE PROPERTY ADVISORS / HULBERG &amp; ASSOCIATES, INC.

File No. CA03-15-0090-000 50 E.

March 2, 2015

Attention:

City of Morgan Hill  
17675 Peak Avenue  
Morgan Hill, CA 95037

File Number: CA03-15-0090-000 50 E. 1st St, Morgan

To whom it may concern,

In accordance with your request, I have appraised the real property at:

50 East 1st Street  
Morgan Hill, CA 95037

The purpose of this appraisal is to develop an opinion of the defined value of the subject property, as improved.  
The property rights appraised are the fee simple interest in the site and improvements.

In my opinion, the defined value of the property as of February 18, 2015 is:

\$620,000  
Six Hundred Twenty Thousand Dollars

The attached report contains the description, analysis and supportive data for the conclusions,  
final opinion of value, descriptive photographs, assignment conditions and appropriate certifications.

Sincerely,



Nolan S. Tong  
AG040516

March 6, 2015

Mrs. Leslie Little  
Assistant City Manager  
for Community Development  
City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037

Re: 50 First Street, Morgan Hill, CA. / disposition of duplex for sale

Dear Leslie:

Smith Commercial Management, Inc. has managed this asset for the last five years; we are responsible for all maintenance issues, tenant relations and accounting for this property.

I will be responsible for representing this asset for sale (bio enclosed), if Smith Commercial Management, Inc. is selected to represent this property for sale.

I have had extensive experience in selling commercial, industrial, retail and income properties over the last 34 years in the greater Silicon Valley market area. Income property sales are typically orchestrated to maximize the sale value of the asset by reviewing multiple offers and selecting the best offer, which meets the seller's expectations. Included with this letter you will find examples of properties I have represented and previously sold in the recent past.

Prior to joining Smith Commercial Management, I was a Senior Director with Cushman and Wakefield's Silicon Valley office for many years.

To maximize the value of 50 E. 1<sup>st</sup> St., marketing packages should be circulated to the following web sites and/or association groups:



**Smith Commercial  
Management, Inc.**

16270 Monterey Street, Suite 160 | Morgan Hill, CA 95037 | phone. 408.779.0090 | fax. 408.762.2028

[www.smithcmi.com](http://www.smithcmi.com)

**"Guardians of your Commercial Real Estate"**

1. Santa Clara County Association of Realtors (MLS listing)
2. Santa Cruz County board of Realtors (Income property listing)
3. Monterey County board of Realtors (Income property listing)
4. San Mateo County board of Realtors (Income property listing)
5. Alameda County board of Realtors (Income property listing)
6. LoopNet (web site - Income property)
7. Trulia (web site)
8. Zillow (web site)
9. Craigslist (web site)
10. The Registry (web based commercial and income property publication)
11. Real Wealth Network (web site)
12. Auction.com (set up actual auction process)

Once the Hulberg Appraiser establishes a formal threshold value for the subject property; 50 E. 1<sup>st</sup> will be positioned for competitive bidding. The appraised value will be the minimum value (floor). The ultimate value for the sale will be established by two factors; (1) possible 1031 Tax Deferred Exchange Buyers, (2) Speculators and investors projecting a continuing upward surge in residential income rents.

Unlike single family homes, the sale environment for 2 units or more of residential income properties brings with it a different buyer profile. Typically the profile includes less speculation and a greater tendency toward discounting value, based on the physical conditions of the income property.

The market is currently primed for achieving a successful sale at and/or possibility pushing above the projected appraised value. We are aware certain individuals in Morgan Hill have already acknowledged interest in pursuing this property, if it becomes available for sale. This is a good sign to push the market value up, if the property goes on the market.

I would be happy to meet with you and the Oversight Board at any time to discuss my qualifications and market strategy.

Please contact me with additional questions,

Sincerely yours,

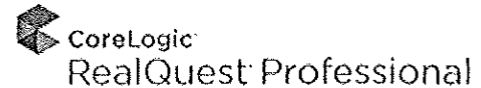


Rudy Silverberg  
Executive Managing Director  
408-779-0098  
[Rudy@Smithcmi.com](mailto:Rudy@Smithcmi.com)  
DRE Lic. #00772243



## Property Detail Report

For Property Located At :  
50 E 1ST ST, MORGAN HILL, CA 95037-3627



## Owner Information

Owner Name: CITY OF MORGAN HILL/CITY CLERK  
Mailing Address: 17575 PEAK AVE, MORGAN HILL CA 95037-4128 C016  
Vesting Codes: //

## Location Information

Legal Description:	MAP G PG 19 BLK 17 LOT 11	APN:	726-14-032
County:	SANTA CLARA, CA	Alternate APN:	
Census Tract / Block:	5123.14 / 4	Subdivision:	MORGAN HILL MAP 02
Township-Range-Sect:		Map Reference:	79-E4 / 917-A7
Legal Book/Page:		Tract #:	
Legal Lot:	11	School District:	MORGAN HILL
Legal Block:	17	School District Name:	
Market Area:	1	Munic/Township:	MORGAN HILL CITY
Neighbor Code:			

## Owner Transfer Information

Recording/Sale Date:	06/10/2013 / 06/07/2013	Deed Type:	GRANT DEED
Sale Price:		1st Mtg Document #:	
Document #:	22256755		

## Last Market Sale Information

Recording/Sale Date:	08/20/2004 / 08/09/2004	1st Mtg Amount/Type:	\$465,000 / CONV
Sale Price:	\$620,000	1st Mtg Int. Rate/Type:	/ ADJ
Sale Type:	UNKNOWN	1st Mtg Document #:	17960284
Document #:	17960283	2nd Mtg Amount/Type:	/
Deed Type:	GRANT DEED	2nd Mtg Int. Rate/Type:	/
Transfer Document #:		Price Per SqFt:	\$294.68
New Construction:		Multi/Split Sale:	

Title Company: COMMONWEALTH LAND TITLE CO.  
Lender: CHEVY CHASE BK FSB  
Seller Name: STIEB TRUST

## Prior Sale Information

Prior Rec/Sale Date:	02/01/1991 /	Prior Lender:	HOME SVGS/AMERICA
Prior Sale Price:	\$280,000	Prior 1st Mtg Amt/Type:	\$210,000 / CONV
Prior Doc Number:	10795489	Prior 1st Mtg Rate/Type:	/
Prior Deed Type:	GRANT DEED		

## Property Characteristics

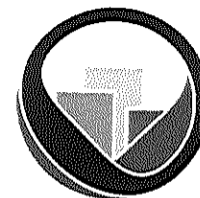
Gross Area:	2,104	Parking Type:	COVERED	Construction:	WOOD
Living Area:	2,104	Garage Area:		Heat Type:	NONE
Tot Adj Area:		Garage Capacity:		Exterior wall:	
Above Grade:		Parking Spaces:	506	Porch Type:	
Total Rooms:		Basement Area:		Patio Type:	NONE
Bedrooms:		Finish Bsmnt Area:		Pool:	
Bath(F/H):	/	Basement Type:		Air Cond:	YES
Year Built / Eff:	1988 / 1988	Roof Type:		Style:	H-SHAPE
Fireplace:	Y /	Foundation:		Quality:	GOOD
# of Stories:	2.00	Roof Material:		Condition:	AVERAGE
Other Improvements:					

## Site Information

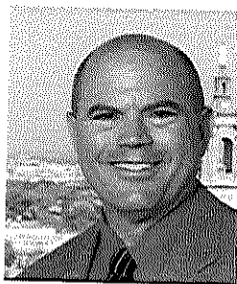
Zoning:	R2	Acres:	0.13	County Use:	RESID 2-FAMILY (02)
Lot Area:	5,663	Lot Width/Depth:	x	State Use:	
Land Use:	DUPLEX	Res/Comm Units:	2 /	Water Type:	TYPE UNKNOWN
Site Influence:				Sewer Type:	

## Tax Information

Total Value:		Assessed Year:		Property Tax:	
Land Value:		Improved %:		Tax Area:	04001
Improvement Value:		Tax Year:		Tax Exemption:	
Total Taxable Value:					



## Smith Commercial Management, Inc.



### RUDY SILVERBERG

EXECUTIVE MANAGING DIRECTOR | BROKERAGE SERVICES

SMITH COMMERCIAL MANAGEMENT, INC. - LICENSE NO: 01835606

LICENSE NO: 00772243

### ROLE & RESPONSIBILITIES

Rudy Silverberg has worked in Silicon Valley as a leasing and sales broker for more than 33 years, specializing in land development, commercial, industrial, retail leasing and property sales. His brokerage activates include property both land and building sales, landlord and tenant representation, and development consulting. His expertise has allowed Mr. Silverberg to successfully negotiate over eleven million square feet of lease/sale transactions, valued at over \$1 Billion. Mr. Silverberg recognizes the importance of building strong and long-lasting relationships with his clients. His focus has always been to fully understand his client's needs and work diligently to fulfill them. His level of experience, negotiation strategy and knowledge creates the optimum components for successful transactions.

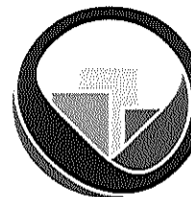
### KEY ASSIGNMENTS

#### PARTIAL CLIENT LIST

AMF	Celestica	Mi Pueblo Foods
Archon Group / Goldman Sachs & Co.	Golden State University	Pacific Properties
Bank of America	GTE Internet	REC Group
Burnham Energy, Inc.	Hanwha Solar One	Simpson, Thatcher & Bartlett
BT North America	Hewlett Packard	Software Publishing Corporation
Chubb Insurance	Highgate Management	Stanford Hospital

Email: rudy.smithcmi.com  
 URL: www.smithcmi.com  
 Phone: (408) 779-0090  
 Cell: (408) 892-2717

16270 Monterey Street, Suite 160  
 Morgan Hill, CA 95037



## Smith Commercial Management, Inc.

Cornerstone Research	ITW Corporation	SCI
On Lok Senior Services	Johnson & Higgins	Trumark Commercial
Dow Jones	Liberty Mutual	TaylorMade
Eastman Kodak Company	Limbach & Limbach	Ziff Davis Publishing

### EDUCATION, MEMBERSHIPS AND AWARDS

- Bachelor of Arts, San Francisco State University
- Director & Board Member of Association of Silicon Valley Brokers
- Member of Navy League, Santa Clara Valley Chapter
- Previous Board Member for Goodwill Industries of Santa Clara County
- Board Member of Economic Development Forum, City of Morgan Hill
- Member of CREW Silicon Valley
- Member of BOMA Silicon Valley

Email: rudy.smithcmi.com  
 URL: www.smithcmi.com  
 Phone: (408) 779-0090  
 Cell: (408) 892-2717

16270 Monterey Street, Suite 160  
 Morgan Hill, CA 95037

**AGREEMENT OF PURCHASE AND SALE OF OPTION  
AND INITIAL ESCROW INSTRUCTIONS**

**Site 3 Option (Booksmart)**

**Morgan Hill, California**

This Agreement of Purchase and Sale of Option and Initial Escrow Instructions (“**Agreement**”), dated for reference purposes only as of \_\_\_\_\_, 2015, is entered into by and between CITY VENTURES, INC., a \_\_\_\_\_ corporation (“**Buyer**”), and SUCCESSOR AGENCY TO THE FORMER MORGAN HILL REDEVELOPMENT AGENCY (“**Seller**” or “**Current Optionee**”).

**Recitals**

A. The Agreement relates to a certain parcel of improved real property (the “**Option Property**”) commonly known as 95 East Third Street, Morgan Hill, California, APN 726-14-001, as more particularly described in Exhibit A to the Option Agreement (as defined below) and Schedule 1 attached hereto. The Option Property consists of approximately 46,609 sq ft of land, and \_\_\_\_\_ of improvements consisting of \_\_\_\_\_.

B. Seller is, or is expected to become (as provided in Section 7(a)(i) below), the holder of the option to purchase the Option Property (“**Option**”) originally granted by Llagas Valley Investments LLC, a California Limited Liability Company (“**Optionor**”) under, and pursuant to the terms and conditions of, that certain Option Agreement, dated May 24, 2010 (“**Option Agreement**”), between Optionor and the Morgan Hill Redevelopment Agency (“**RDA**”), and evidenced by that certain Memorandum of Option (“**Original Memorandum**”) between Optionor and RDA, dated May 24, 2010 and recorded in the Official Records of Santa Clara County on June 18, 2010 as Document 20746376. True and complete copies of the Option Agreement and Original Memorandum are attached hereto as Exhibit A-1 and Exhibit A-2, respectively.

C. Seller acquired, or is expected to acquire (as provided in Section 7(a)(i) below), the Option pursuant to an Assignment of Option Agreement, between Seller and the Morgan Hill Economic Development Corporation (“**MHEDC**”), dated \_\_\_\_\_, 2015 (“**MHEDC Assignment**”). Seller’s acquisition was (or will be) evidenced by that certain Memorandum of Assignment of Option (“**MHEDC Assignment Memorandum**”) between Seller and MHEDC, dated \_\_\_\_\_, 2015 and recorded in the Official Records of Santa Clara County on \_\_\_\_\_, 2015 as Document \_\_\_\_\_, substantially in the forms attached hereto as Exhibit B-1 and Exhibit B-2, respectively.

D. MHEDC acquired the Option pursuant to a Four Party Option Assignment Agreement, among MHEDC, the City of Morgan Hill (“**City**”), Santa Clara Valley Transit Authority (fka Santa Clara County Transit District) and the RDA, dated September 15, 2011 (“**City Assignment**”). MHEDC’s acquisition was evidenced by that certain Memorandum of Assignment of Option (“**City Assignment Memorandum**”) between MHEDC and City, dated September 15, 2011 and recorded in the Official Records of Santa Clara County on September

23, 2011 as Document 21334322. True and complete copies of the City Assignment and City Assignment Memorandum are attached hereto as Exhibit C-1 and Exhibit C-2, respectively.

E. The City acquired the Option pursuant to an Option Assignment Agreement between the City and the RDA, dated March 16, 2011 (“**RDA Assignment**”). The City’s acquisition was evidenced by that certain Memorandum of Assignment of Option (“**RDA Assignment Memorandum**”) between the City and RDA, dated March 16, 2011 and recorded in the Official Records of Santa Clara County on March 21, 2011 as Document 21116611. True and complete copies of the RDA Assignment and RDA Assignment Memorandum are attached hereto as Exhibit D-1 and Exhibit D-2, respectively.

F. Buyer desires to purchase the Option from Seller and Seller desires to sell the Option to Buyer upon the terms, conditions and provisions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties agree as follows:

### **Agreement**

1. **Purchase and Sale of Option.** Seller agrees to sell and assign to Buyer, and Buyer agrees to purchase from Seller, the Option, on the terms and subject to the conditions set forth in this Agreement. For the purpose of this Agreement, the date on which Escrow Holder acknowledges in writing receiving a fully executed copy of this Agreement shall (subject to Section 3 below) be hereinafter referred to as the “**Effective Date.**”

2. **Purchase Price.** The purchase price (“**Purchase Price**”) for the Option shall be the amount of One Hundred Thousand and 00/100<sup>th</sup> Dollars (\$100,000.00).

### **3. Conditional Effectiveness of Agreement.**

(a) This Agreement shall become effective only upon the satisfaction of each of the following conditions (collectively, the “**Conditions Precedent to Effectiveness**”) within the time period set forth herein:

(i) The Oversight Board to the Successor Agency to the former Morgan Hill Redevelopment Agency shall have approved this Agreement; and

(ii) Unless expressly waived by both parties in writing, the State of California Department of Finance shall have approved or been deemed to have approved the Oversight Board’s approval as provided in (i) above.

(b) Seller shall use diligent good faith efforts to cause the foregoing Conditions Precedent to Effectiveness to be satisfied on or before the Outside Date (defined below); provided, however, if, notwithstanding Seller’s good faith diligent efforts, the Conditions Precedent to Effectiveness have not been satisfied on or before July 31, 2015, or such later date as the parties may mutually agree each in its sole discretion (the “**Outside Date**”), this Agreement shall automatically terminate at 5:00 pm on the Outside Date. If this Agreement is

terminated pursuant to this Section 3, the Deposit (as defined below) shall be returned to Buyer (provided that Buyer has complied with the terms of Section 19(m) below), and, except as otherwise provided in this Agreement, Seller and Buyer will have no further obligations or rights to one another under this Agreement.

**4. Payment of Purchase Price.** The Purchase Price shall be payable by Buyer to Seller as follows:

(a) Deposit. No later than two business days after the Effective Date, Buyer shall deposit with Chicago Title Insurance Company, 675 N First Street, San Jose, CA 95112 (Attention: Christina Molotla) (“**Escrow Holder**”) the sum of One Hundred Thousand and 00/100<sup>th</sup> Dollars (\$100,000.00) (“**Deposit**”). The Deposit shall be invested by Escrow Holder with a financial institution acceptable to Buyer in a federally-insured interest-bearing demand account and the Deposit and all interest accrued thereon shall be credited to the Purchase Price upon the Close of Escrow (as defined in Section 5(b), below). Upon expiration of the Contingency Period (as defined in Section 7(a), below), the Deposit shall be immediately released to Seller, and except for a default by Seller, the Deposit shall become nonrefundable to Buyer.

(b) Time of the Essence. Time shall be of the essence with respect to Buyer’s obligations to pay the Deposit and all other funds under this Agreement.

**5. Escrow.**

(a) Opening of Escrow. Within one business day after the Effective Date, Buyer shall open escrow (“**Escrow**”) with Escrow Holder. Buyer and Seller agree to execute and deliver to Escrow Holder, in a timely manner, all escrow instructions necessary to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend or supersede any portion of this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control. Escrow Holder shall, upon receipt of a fully executed copy of this Agreement, sign and date the Receipt by Escrow Holder attached hereto, and distribute it to all parties listed in the “Notices” sections of the Agreement.

(b) Close of Escrow. For the purpose of this Agreement, the “**Close of Escrow**” shall be defined as the date that the Seller Assignment Memorandum (as defined in Section 6, below) is recorded in the Official Records of the County. The Close of Escrow shall occur within ten business days after the expiration of the Contingency Period, unless extended by the mutual written consent of the parties hereto.

**6. Conveyance of Option.** The Option shall be sold and assigned to Buyer by Seller by an Assignment of Option, substantially in the form attached hereto as Exhibit E-1 (“**Seller Assignment**”), and be evidenced by a Memorandum of Assignment of Option, substantially in the form attached hereto as Exhibit E-2 (“**Seller Assignment Memorandum**”).

## 7. Conditions to Close of Escrow.

(a) Conditions to Buyer's Obligations. The Close of Escrow and Buyer's obligation to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions (or Buyer's waiver in writing thereof) for Buyer's benefit on or prior to the dates designated below for the satisfaction of such conditions, or the Close of Escrow in the absence of a specified date:

(i) Title to Option. In the event that, on or before the execution of this Agreement, (a) the MHEDC Assignment has not been fully executed, and (b) the MHEDC Assignment Memorandum has not been fully executed and recorded in the Official Records of Santa Clara County, Seller shall use diligent good faith efforts to do so as promptly as reasonably possible and shall, in any event, do so before expiration of the Contingency Period. Thereafter, copies of such executed and (as applicable) recorded documents shall be delivered to Buyer and become Exhibit B-1 and Exhibit B-2, respectively, to this Agreement.

(ii) Title to Option Property. Pursuant to the terms and conditions of this subsection, Buyer shall have the right to approve any and all matters of and exceptions to title of the Option Property, as disclosed by the following documents and instruments (collectively, "**Title Documents**"): (A) a Preliminary Report issued by Escrow Holder with respect to the Option Property; (B) legible copies of all recorded documents referred to in such Preliminary Report, and (C) to the extent otherwise reasonably available to Seller, copies of all unrecorded documents referred to in such Preliminary Report. Seller shall cause Escrow Holder to deliver the Title Documents to Buyer within five calendar days following the Effective Date. Buyer shall have until 5:00 PM (local time) on the date that is the later of (x) 60 calendar days following the Effective Date or (y) ten calendar days following satisfaction of all Conditions Precedent to Effectiveness (as defined in Section 3, above) ("**Contingency Period**") to give Seller and Escrow Holder written notice ("**Buyer's Title Notice**") of Buyer's approval or disapproval of the Title Documents. The failure of Buyer to give Buyer's Title Notice to Seller within the specified time period shall be deemed Buyer's disapproval of the Title Documents. In the event that Buyer's Title Notice disapproves, or is deemed to have disapproved, of any matter of title shown in the Title Documents, Seller shall, within five business days after Buyer's Title Notice is received by Seller, give Buyer written notice ("**Seller's Title Notice**") of those disapproved title matters, if any, which Seller is unwilling or unable after reasonable and good faith efforts to have eliminated from title to the Option Property by the Close of Escrow. Buyer acknowledges that Seller does not own the Option Property, and that Seller need not expend any funds to remove any document recorded against the Option Property, even if the existence of the document is or could be a breach (with or without the passage of time, giving of notice, or both) under the Option Agreement. If Seller is unable or unwilling to remove all of the title matters objected to by Buyer in Buyer's Title Notice, or fails to deliver Seller's Title Notice, Buyer shall have five business days from receipt of Seller's Title Notice, or expiration of the time period within which Seller is to respond, to notify Seller in writing that either (1) Buyer is willing to assume the Option, subject to such disapproved exceptions, or (2) Buyer elects to terminate this transaction. Failure of Buyer to take either one of the actions described in clause (1) or (2) in the previous sentence shall be deemed to be Buyer's election to take the action described in clause (2). If this Agreement is terminated pursuant to this Section 7(a)(ii), the Deposit shall be

returned to Buyer (provided that Buyer has complied with the terms of Section 19(m) below), and, except as otherwise provided in this Agreement, Seller and Buyer will have no further obligations or rights to one another under this Agreement;

(iii) Inspections and Studies/Costs. During the Contingency Period, Seller shall cooperate with Buyer to provide Buyer, including its employees, agents, contractors, subcontractors and consultants (collectively, **“Buyer’s Representatives”**), to the extent Seller is entitled under the Option Agreement (or as Optionor may otherwise agree in Optionor’s sole discretion), the ability to enter upon the Option Property, meet with Option property tenants, and conduct any and all non-destructive inspections, investigations, tests and studies (including, without limitation, investigations with regard to zoning, building codes and other governmental regulations, architectural inspections, engineering tests, economic feasibility studies and soils, seismic and geologic reports and environmental testing) with respect to the Option Property as Buyer may elect to make or maintain. The cost of any such inspections, tests and/or studies shall be borne by Buyer. Buyer may make destructive tests only if expressly permitted by Optionor, and under such conditions as Optionor may determine in its sole discretion. Seller’s cooperation shall be limited to making written and (if requested) written requests to Optionor; without limiting the foregoing, under no circumstances shall Seller be required to initiate, or threaten to initiate, any judicial or other legal proceedings, or otherwise exercise any legal right Seller may have, to obtain any such rights to Buyer.

In addition to whatever conditions Optionor may require from Buyer, Buyer shall indemnify, defend and hold Seller and the Option Property harmless from any and all claims, damages or liabilities arising out of or resulting from the entry onto or activities upon the Option Property by Buyer or Buyer’s Representatives or liens arising from Buyer’s due diligence review of the Option Property. Prior to any entry on to the Option Property by any of Buyer’s Representatives, Buyer shall deliver to Seller an endorsement to a commercial general liability insurance policy which evidences that such Buyer’s Representative is carrying a commercial general liability insurance policy with a financially responsible insurance company acceptable to Seller, covering the activities of such Buyer’s Representative on or upon the Option Property. Such endorsement shall evidence that such insurance policy shall have a per occurrence limit of at least One Million and 00/100<sup>th</sup> Dollars (\$1,000,000.00) and an aggregate limit of at least Three Million and 00/100<sup>th</sup> Dollars (\$3,000,000.00), shall name Seller and Optionor as additional insureds, and shall be primary and non-contributing with any other insurance, self-insurance or joint self-insurance available to Seller or Optionor.

Prior to the expiration of the Contingency Period, Buyer shall deliver to Seller and Escrow Holder written notice (**“Contingency Period Notice”**) of its approval or disapproval of the Option Property and the Documents and Materials (as defined in Section 7(a)(vi), below). (The Contingency Period Notice may, but need not, be combined with the Buyer’s Title Notice.) The failure of Buyer to timely deliver the Contingency Period Notice shall be deemed to constitute Buyer’s disapproval of the Option Property and the Documents and Materials, and the Deposit shall be returned to Buyer (provided that Buyer has complied with the terms of Section 19(m) below), and, except as otherwise provided in this Agreement, Seller and Buyer will have no further obligations or rights to one another under this Agreement.



If this Agreement is terminated pursuant to this subsection, Buyer shall deliver to Seller (y) the Documents and Materials delivered to Buyer by Seller, and (z) at no cost and without warranty as to correctness, copies of all reports, studies, maps and engineering studies that were generated by third parties for Buyer with respect to the Option Property, including, but not limited to, all environmental reports, surveys, marketing reports, geotechnical reports, lot studies and improvement plans;

(iv) Seller's Representations. All representations and warranties made by Seller to Buyer in this Agreement shall be true and correct on the date hereof and shall be true and correct in all material respects as of the Close of Escrow;

(v) Seller's Obligations. As of the Close of Escrow, Seller shall have performed all of the obligations required to be performed by Seller under this Agreement;

(vi) Documents and Materials. Within ten calendar days after the Effective Date, Seller shall deliver to Buyer all of the documents and materials described on Exhibit F attached hereto (other than those that are attachments to this Agreement), to the extent within Seller's possession or control ("**Documents and Materials**"). Upon delivery of the Documents and Materials, Seller shall deliver an acknowledgment letter to Buyer setting forth the date of compliance with this Section 7(a)(vi) and setting forth the list of Documents and Materials actually delivered to Buyer. Seller makes no representation or warranty as to the accuracy or completeness of any of the Documents and Materials which were not prepared by Seller; and

(b) Conditions to Seller's Obligations. The Close of Escrow and Seller's obligation to consummate the transactions contemplated in this Agreement are subject to the satisfaction of the following conditions (or Seller's waiver thereof) for Seller's benefit on or prior to the dates designated below for the satisfaction of such conditions, or the Close of Escrow in absence of a specified date:

(i) Buyer's Obligations. Buyer shall have timely performed all of the obligations required to be performed by Buyer under this Agreement;

(ii) Buyer's Representations. All representations and warranties made by Buyer to Seller in this Agreement shall be true and correct on the date hereof and shall be true and correct in all material respects as of the Close of Escrow; and

(iii) Purchase Price. Buyer shall have timely delivered the Purchase Price and other sums owing under this Agreement in good funds to Escrow Holder and fully, faithfully and timely performed all of its other obligations under this Agreement.

(c) Failure of Condition to Close of Escrow. If any of the conditions set forth in Section 7(a) or Section 7(b) are not timely satisfied or waived by the appropriate benefited party for a reason other than the default of Buyer or Seller, this Agreement shall terminate, and the Deposit and all other monies delivered to Escrow Holder by Buyer shall be immediately returned to Buyer (provided that Buyer has complied with the requirements of Section 19(m) below), and except as otherwise provided herein, the parties shall have no further obligations hereunder.

**8. Deposits By Seller.** At least one business day prior to the Close of Escrow, Seller shall deposit with Escrow Holder the following documents:

(a) Assignment Documents. Two copies of the Seller Assignment, duly executed by Seller, and one copy of the Seller Assignment Memorandum, duly executed and acknowledged in recordable form by Seller.

**9. Deposits By Buyer.** At least one business day prior to the Close of Escrow, Buyer shall deposit or cause to be deposited with Escrow Holder the following:

(a) Assignment Documents. Two copies of the Seller Assignment, duly executed by Buyer, and one copy of the Seller Assignment Memorandum, duly executed and acknowledged in recordable form by Buyer.

(b) Purchase Price. The balance of the Purchase Price (as adjusted by the Deposit), if any, in cash or immediately available funds.

**10. Costs and Expenses.** Except as otherwise specified in this Agreement, Seller and Buyer shall equally divide all escrow fees, and costs. Buyer and Seller shall each pay all legal and professional fees and fees of other consultants incurred by Buyer and Seller, respectively. Any costs incurred through the Escrow relating to the Option or Option Property that are not specifically allocated to Buyer or Seller under this Agreement shall be apportioned in the manner customary in the County.

**11. Condition and Inspection of Option Property.**

(a) Buyer acknowledges that if it elects to exercise the Option granted pursuant to the Option Agreement and to purchase the Option Property, such purchase shall be on the basis set forth in the Option Agreement and Seller specifically acknowledges and agrees that, notwithstanding any other provision of this Agreement to the contrary, Seller makes no representation or warranty whatsoever regarding the Option Property including, without limitation:

(i) The size and dimensions of any portion of the Option Property;

(ii) The size and dimensions of any improvements on the Option property;

(iii) The suitability of the Option Property or any improvements for the Buyer's planned use, including availability and adequacy of water, sewage, fire protection, and any utilities serving the Option Property;

(iv) All matters relating to title including extent and conditions of title to the Option Property, taxes, assessments, and liens;

(v) All legal and governmental laws, statutes, rules, regulations, ordinances, limitations on title, restrictions or requirements concerning the Option Property including zoning, use permit requirements and building codes;

(vi) Natural hazards, including flood plain issues, currently or potentially concerning or affecting the Option Property;

(vii) The physical, legal, economic and environmental condition and aspects of the Option Property, and all other matters concerning the conditions, use or sale of the Option Property, including any permits, licenses, agreements, and liens, zoning reports, engineers' reports and studies and similar information relating to the Option Property, and Hazardous Materials (as defined below). **"Hazardous Materials"** means any and all substances, contaminants, chemicals, wastes, sewage, materials or emissions which are now or hereafter regulated, controlled, prohibited or otherwise affected by any present or future local, state or federal statute, ordinance, code, rule, regulation, order, decree, permit or other law now or hereafter in effect including (A) any substance defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," or "air pollutant" in (I) the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. §9601, et seq., (II) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq., (III) the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §6901, et seq., (IV) the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, et seq., (V) the Clean Air Act, as amended, 42 U.S.C. §7401, et seq., (VI) the Toxic Substances Control Act, as amended, 15 U.S.C. §2601, et seq., (VII) the Clean Water Act, as amended, 33 U.S. Code §1251, et seq., (VIII) the Oil Pollution Act, as amended, 33 U.S.C. §2701, et seq., (IX) California Health & Safety Code ("H&S Code") §25100, et seq. (Hazardous Waste Control), (X) the Hazardous Substance Account Act, as amended, H&S Code §25300, et seq., (XI) the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, as amended, H&S Code §25404, et seq., (XII) H&S Code §25531, et seq. (Hazardous Materials Management), (XIII) the California Safe Drinking Water and Toxic Enforcement Act, as amended, H&S Code §25249.5, et seq., (XIV) H&S Code §25280, et seq. (Underground Storage of Hazardous Substances), (XV) the California Hazardous Waste Management Act, as amended, H&S Code §25170.1, et seq., (XVI) H&S Code §25501, et seq. (Hazardous Materials Response Plans and Inventory), (XVII) H&S Code §18901, et seq. (California Building Standards), (XVIII) the Porter-Cologne Water Quality Control Act, as amended, California Water Code §13000, et seq., (XIX) California Fish and Game Code §5650-5656 and (XX) or any other federal, state or local laws, ordinances, rules, regulations, court orders or common law related in any way to the protection of the environment, health or safety (collectively, **"Environmental Laws"**); (B) any substance the presence of which at the Option Property causes or threatens to cause a nuisance upon the Option Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of human beings; and (C) any substance the presence of which at the Option Property or at nearby or adjacent properties could constitute a trespass. In addition to the foregoing, to the extent not already included therein, the term "Hazardous Materials" also means (I) asbestos (including asbestos-containing materials); (II) flammable, explosive, infectious, carcinogenic, mutagenic, or radioactive materials; (III) petroleum or any substance containing or consisting of petroleum hydrocarbons (including gasoline, diesel fuel, motor oil, waste oil, grease or any other fraction of crude oil); (IV) paints and solvents; (V) lead; (VI) cyanide; (VII) DDT; (VIII) printing inks; (IV) acids; (X) pesticides; (XI) ammonium compounds; (XII) polychlorinated biphenyls; (XIII) radon and radon gas; and (XIV) electromagnetic or magnetic materials, substances or emissions;

- (viii) Any easements and/or access rights affecting the Option Property;
- (ix) Any lease or sublease relating to the Option Property and all matters in connection therewith, including the ability of any tenant or subtenant to pay the rent and the economic viability of any tenant or subtenant;
- (x) The financial condition of the Option Property, including lease income and expenses;
- (xi) Any contracts and other documents or agreements affecting the Option Property; and
- (xii) Any other matter of significance affecting the Option Property.

**12. Seller's Representations and Warranties.** In consideration of Buyer entering into this Agreement, Seller makes the representations and warranties set forth in this Section 12. For the purpose of this Agreement, without creating any personal liability on behalf of such individual, usage of "to Seller's actual knowledge," or words to such effect, shall mean the present, actual knowledge of Leslie Little, Assistant City Manager for Community Development of the City of Morgan Hill, excluding constructive knowledge or duty of inquiry, existing as of the Effective Date. In the event that Buyer, prior to Close of Escrow, becomes aware, from Seller or otherwise, of any inaccuracy or omission in the disclosures, information, or representations previously provided to Buyer by Seller or its consultants or agents, which will have a material, adverse impact on Buyer, the Option, the Option Property, or the intended use of the Option Property, Buyer, as its sole option and remedy, may either (i) terminate this transaction and receive a refund of its Deposit, thereby waiving any claims or actions that Buyer may have against Seller as a result of such inaccuracy or omission, or (ii) proceed with the Close of Escrow hereunder, thereby waiving any rights that Buyer may have against Seller as a result of such inaccuracy or omission. Buyer agrees that, under no circumstances, shall Buyer be entitled to purchase the Option hereunder (or, following exercise of the Option, purchase the Option Property) and then bring any claim or action against Seller for damages as a result of such inaccuracy or omission, except if such inaccuracy or omission is based on fraud or intentional misrepresentation by Seller.

(a) Seller's Authority. The execution and delivery of this Agreement has been duly authorized and (subject to Section 7(a)(i)) no other action by Seller is required in order to make it a valid and binding contractual obligation of Seller. The individual(s) executing this Agreement on behalf of Seller are authorized to do so.

(b) No Prior Transfers. Seller has not previously sold, transferred or conveyed the Option, or granted to any other person or entity any right or interest in all or any part of the Option and Seller has not entered into any executory contracts for the sale of all or any part of the Option (other than this Agreement), nor do there exist any rights of first refusal or options to purchase the Option, other than this Agreement.

(c) Condition of Option. Except for Seller's express representations and warranties in this this Agreement and (if any) in the Seller Assignment, Seller is transferring the

Option to Buyer on an “As-Is, Where-is” basis. Notwithstanding the foregoing, Seller represents and warrants that upon Close of Escrow it will transfer to Buyer all of its interests in and to the Option.

**13. Buyer’s Representations and Warranties.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Option to Buyer, Buyer makes the following representations and warranties, each of which is material and is being relied upon by Seller (the continued truth and accuracy of which constitutes a condition precedent to Seller’s obligations hereunder):

(a) Buyer’s Authority. Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement. The individual(s) executing this Agreement on behalf of Buyer are authorized to do so.

(b) Enforceability. This Agreement and all documents required hereby to be executed by Buyer are and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms.

(c) Conflicting Documents. Neither the execution and delivery of this Agreement and the documents and instruments referenced herein, nor the occurrence of the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement and the documents and instruments referenced herein conflict with or result in the materials breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Buyer is a party.

(d) No Side Agreements or Representations. Buyer represents, warrants and covenants to Seller that Buyer has entered into this Agreement based upon its rights and intentions to independently inspect the Option Property. Except as specifically provided in Section 12 of this Agreement, Seller makes no representation or warranty regarding the Option. Seller makes no representation or warranty regarding the Option Property, its past use, or its suitability for Buyer’s intended use. Buyer will be relying solely upon its own independent inspection, investigation, and analysis of the Option and Option Property as it deems necessary or appropriate in so acquiring the Option from Seller, and if it elects to exercise the Option and purchase the Option Property, Buyer shall look solely to the Optionor, and not to Seller, with respect to any claims relating to the Option Property, subject to any limitations on recourse against the Optionor set forth in the Option Agreement.

**14. Liquidated Damages.** BUYER RECOGNIZES THAT THE OPTION WILL BE REMOVED BY THE SELLER FROM THE MARKET DURING THE EXISTENCE OF THIS AGREEMENT, AND THAT IF THIS TRANSACTION CONCERNING THE OPTION IS NOT CONSUMMATED BECAUSE OF BUYER’S DEFAULT, IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE EXTENT OF THE DETRIMENT TO SELLER. THE PARTIES HAVE DETERMINED AND AGREED THAT THE ACTUAL

AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY SELLER AS A RESULT OF ANY SUCH DEFAULT IS DIFFICULT OR IMPRACTICABLE TO DETERMINE AS OF THE DATE OF THIS AGREEMENT AND THAT THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE AMOUNT OF SUCH DAMAGES. FOR THESE REASONS, THE PARTIES AGREE THAT IF THE PURCHASE AND SALE OF THE OPTION IS NOT CONSUMMATED BECAUSE OF BUYER'S DEFAULT, THE DEPOSIT SHALL BE FORFEITED TO SELLER AS LIQUIDATED DAMAGES. NOTHING CONTAINED HEREIN SHALL IN ANY MANNER LIMIT THE AMOUNT OF DAMAGES OBTAINABLE PURSUANT TO AN ACTION UNDER ANY HOLD HARMLESS, DEFENSE OR INDEMNIFICATION PROVISION SET FORTH IN THIS AGREEMENT OR REASONABLE ATTORNEYS' FEES RECOVERABLE PURSUANT TO ANY ACTION UNDER A HOLD HARMLESS, DEFENSE OR INDEMNIFICATION SET FORTH IN THIS AGREEMENT.

Seller \_\_\_\_\_ Buyer \_\_\_\_\_

**15. Damage or Condemnation Prior to Closing.** Seller shall use good faith efforts to promptly notify Buyer of its receipt of actual knowledge of any casualty to the Option Property or any condemnation proceeding considered or commenced against either the Option or Option Property prior to the Close of Escrow; however, neither the existence or threat of any such damage or proceeding will alter any of the parties' rights or obligations under the Agreement.

**16. Notices.** All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section 16, shall be addressed to the parties in the manner set forth below, and shall be delivered by certified mail return receipt requested, or by overnight courier or delivery service with signature required, to the addresses set forth below, or to such other place as any party may similarly in writing designate to the others. Notices shall be effective three business days after mailing by certified mail, or upon delivery by overnight courier or delivery service (or, if delivery is not during regular business hours on a business day, then on the next business day).

The addresses of the parties to receive notices are as follows:

TO SELLER:

City of Morgan Hill Successor Agency  
17575 Peak Avenue  
Morgan Hill, CA 95037  
Attention: Leslie Little  
Assistant City Manager  
for Community Development  
Email: Leslie.Little@morganhill.ca.gov  
Facsimile: (408) \_\_\_\_\_

WITH A COPY TO:

Burke, Williams & Sorensen, LLP  
1901 Harrison Street, Ninth Floor  
Oakland, CA 94612  
Attention: Gerald J. Ramiza and David A. Rosenthal

Email: jramiza@bwsllaw.com and  
drosenthal@bwsllaw.com  
Facsimile: (510) 839-9104

TO BUYER:

City Ventures, Inc.  
444 Spear Street, Suite 200  
San Francisco, CA 94105  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

WITH A COPY TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

TO ESCROW HOLDER:

Chicago Title Insurance Company  
675 N First Street  
San Jose, CA 95112  
Attention: Christina Molotla  
Email: [cmolotla@ctt.com](mailto:cmolotla@ctt.com)  
Facsimile: \_\_\_\_\_

**17. Brokers.** Each of Seller and Buyer represent that it has not engaged nor is it aware of any person entitled to any brokerage commission or finder's fee in connection with this transaction. Each party agrees to indemnify the other party against any claim asserted against or adjudged against the other party, for any brokerage commission or finder's fee or any like compensation occasioned by or as a result of any act or omission of each such party, including all attorney's fees, costs, expenses and any other fees incurred by, charged against or adjudicated against, the other party, whether or not suit is filed, which are related to this indemnity agreement or enforcement thereof.

**18. Assignment.** Buyer shall not transfer or assign its right, title or interest in this Agreement to any other party without the prior written consent of Seller, which determination may be withheld in Seller's sole and absolute discretion. Buyer may, however, assign this Agreement and all of Buyer's rights under it to an entity in which Buyer has a controlling ownership interest, subject to the terms of this Agreement, provided that (i) such assignee assumes in a writing reasonably acceptable to Seller, all of the obligations of Buyer, (ii) Seller receives prior written notice of such assignment, (iii) the original Buyer remains fully liable for all obligations under this Agreement, and (iv) the assignee agrees to execute all documents and perform all obligations of Buyer as if such assignee were the original Buyer under this Agreement.

**19. Miscellaneous.**

(a) Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(b) Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

(c) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the grantees, transferees, successors and permitted assigns of the parties hereto.

(d) Attorneys' Fees. If either party commences an action against the other to interpret or enforce any of the terms of this Agreement or because of the breach by the other party of any of the terms hereof, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses and court costs and other costs of action incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment.

(e) Entire Agreement. This Agreement (including all Recitals and Exhibits attached hereto), is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

(f) Time of Essence. Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

(g) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties to create the relationship of principal and agent, a partnership, joint venture or any other association between Buyer and Seller.



(h) Construction/Exhibits. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to paragraphs, Sections, subparagraphs and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated herein by this reference.

(i) Governing Law/Venue. The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California. The parties hereto agree that the exclusive jurisdiction and venue for any legal action arising out of or relating to this Agreement shall be in the applicable Court of Santa Clara County, California, or, in the alternative, in cases where Federal jurisdiction is available, in the United States District Court for the Northern District of California.

(j) Days of Week. A “business day,” as used herein, shall mean any day other than a Saturday, Sunday or holiday, as defined in Section 6700 of the California Government Code. If any date for performance herein falls on a day other than a business day, the time for such performance shall be extended to 5:00 p.m. on the next business day.

(k) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

(l) Facsimile Signatures. In order to expedite the transaction contemplated herein, facsimile signatures may be used in place of original signatures on this Agreement. Seller and Buyer intend to be bound by the signatures on the facsimile document, are aware that the other party will rely on the facsimile signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the use of a facsimile signature.

(m) Termination Documents. If this Agreement is terminated prior to the Close of Escrow for any reason, Buyer shall deliver to Seller the following documents and materials (collectively hereinafter referred to as the “**Termination Documents**”): (i) the Documents and Materials delivered to Buyer by Seller (other than those that are attachments to this Agreement), and (ii) at no cost and without warranty as to correctness, copies of all reports, studies, maps and engineering studies that were generated by third parties for Buyer with respect to the Option or Option Property, including, but not limited to, all environmental reports, surveys, marketing reports, geotechnical reports, lot studies and improvement plans. It is understood and agreed that, with respect to any provision of this Agreement which refers to the termination of this Agreement and the return of the Deposit to Buyer, such Deposit shall not be returned to Buyer unless and until Buyer has fulfilled its obligation to return to Seller the Termination Documents.

**[SIGNATURES TO FOLLOW ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

**BUYER:**

CITY VENTURES, INC a \_\_\_\_\_  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SELLER:**

SUCCESSOR AGENCY TO THE FORMER  
MORGAN HILL REDEVELOPMENT  
AGENCY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Renee Gurza, City Attorney

**Schedule of Exhibits**

**Schedule 1**

**Legal Description of Option Property**

**Exhibit A-1**

**Option Agreement**

**Exhibit A-2**

**Option Memorandum**

**Exhibit B-1**

**MHEDC Assignment**

**Exhibit B-2**

**MHEDC Assignment Memorandum**

**Exhibit C-1**

**City Assignment**

**Exhibit C-2**

**City Assignment Memorandum**

**Exhibit D-1**

**RDA Assignment**

**Exhibit D-2**

**RDA Assignment Memorandum**

**Exhibit E-1**

**Successor Agency Assignment**

**Exhibit E-2**

**Successor Agency Assignment Memorandum**

**Exhibit F**

**List of Documents and Materials**

**RECEIPT BY ESCROW HOLDER**

Escrow Holder hereby acknowledges receipt of a fully executed copy of the foregoing Agreement on this date and agrees to abide by the escrow instructions contained therein.

Escrow Holder:

Chicago Title Insurance Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Escrow Officer

Effective Date: \_\_\_\_\_

**SCHEDULE 1**

**Legal Description of Option Property**

The land referred to in this Agreement is situated in the State of California, County of Santa Clara, City of Morgan Hill, and is described as follows:

**[To be inserted by Escrow Holder]**

**EXHIBIT A-1**

**Option Agreement**

*[to be attached]*

**EXHIBIT A-2**

**Option Memorandum**

*[to be attached]*



**EXHIBIT B-1****MHEDC Assignment***[Following for consideration]***ASSIGNMENT OF OPTION AGREEMENT****APN 726-14-001**

This Assignment of Option Agreement (“**Assignment**”) is dated and effective \_\_\_\_\_, 2015 and is entered into by and between MORGAN HILL ECONOMIC DEVELOPMENT CORPORATION (“**Assignor**”), and SUCCESSOR AGENCY TO THE FORMER MORGAN HILL REDEVELOPMENT AGENCY (“**Assignee**”).

**RECITALS:**

A. This Assignment relates to a certain parcel of improved real property (the “**Option Property**”) commonly known as 95 East Third Street, Morgan Hill, California, APN 726-14-001, as more particularly described in Exhibit A to the Option Agreement (as defined below) and Schedule 1 attached hereto (“**Option Property**”).

B. Assignor is the holder of the option to purchase the Option Property (“**Option**”) originally granted by Llagas Valley Investments LLC, a California Limited Liability Company (“**Optionor**”) under, and pursuant to the terms and conditions of, that certain Option Agreement, dated May 24, 2010 (“**Option Agreement**”), between Optionor and the Morgan Hill Redevelopment Agency (“**RDA**”), and evidenced by that certain Memorandum of Option (“**Original Memorandum**”) between Optionor and the Morgan Hill Redevelopment Agency (“**RDA**”), dated May 24, 2010 and recorded in the Official Records of Santa Clara County on June 18, 2010 as Document 20746376.

C. Assignor has become the owner of the Option.

**AGREEMENT:**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

**1. Assignment of Option.** Assignor hereby sells and assigns unto Assignee, and its successors and assigns, all of Assignor’s right, title and interest in and to the Option. By execution hereof, Assignee agrees to assume and be bound by Assignor’s obligations accruing on or after the date hereof under the Option.

**2. Memorandum of Assignment.** Concurrently herewith, to evidence and provide record notice of the assignment of the Option, the parties are entering into a Memorandum of Assignment of Option (“**Memorandum**”), and will have it recorded in the Official Records of Santa Clara County, California. Any conflict between the provisions of this Assignment and the Memorandum shall be governed by this Assignment.

**3. Disclaimer.** Except for Assignor's express representations and warranties herein, ASSIGNOR HEREBY DISCLAIMS, AND ASSIGNEE, BY ITS EXECUTION OF THIS ASSIGNMENT HEREBY ACKNOWLEDGES THAT ASSIGNOR HAS DISCLAIMED, ALL REPRESENTATIONS AND WARRANTIES RELATING TO THE OPTION AND THE OPTION PROPERTY INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ASSIGNEE IS ACQUIRING THE OPTION ON AN "AS-IS, WHERE-IS" BASIS. Notwithstanding the foregoing, Assignor represents and warrants that it is transferring to Assignee all of its interests in and to the Option.

**4. Property Condition Waiver.** Assignee hereby waives its right to recover from Assignor, and the trustees, members, managers, directors, officers, officials, partners, limited partners, employees, agents and predecessors of Seller, and the contractors, subcontractors, architects, engineers and consultants involved in the design and construction of any improvements located on or serving the Option Property (collectively, "**Assignor's Representatives**"), and hereby releases Assignor and Assignor's Representatives from, any and all damages, losses, liabilities, costs or expenses whatsoever (including attorneys' fees and costs) and claims therefor, whether direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way arising out of or connected with (i) the physical condition of the Option Property, (ii) the failure of any improvements or components of the Option Property to comply with any law or regulation applicable thereto, and (iii) the environmental condition of the Option Property. The foregoing waiver and release shall exclude only those losses, liabilities, damages, costs or expenses, and claims therefor, arising from or attributable to (x) a material matter actually known to Assignor (excluding constructive notice) and (1) not disclosed to Assignee and (2) not discovered by Assignee prior to the Close of Escrow, and (y) any breach by Assignor of its express representations or warranties under this Assignment. In connection with foregoing waiver and release, Assignee expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

---

Assignee's Initials

**5. Governing Law.** This Assignment and all other instruments referred to herein shall be governed by, and shall be construed in accordance with, the laws of the State of California.

**6. Successors and Assigns.** This Assignment and the terms and provisions hereof shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of Assignor and Assignee.

7. **Indemnification**. Assignee shall indemnify, defend (with counsel satisfactory to Assignee) and hold Assignor, its elected officials, officers, employees and agents harmless from and against any and all litigation, loss cost, damage, claim, demand, expense or liability whatsoever (including without limitation, reasonable attorneys' fees, charges and costs) (collectively, "**Damages**") arising out of or relating to the Option which Damages occur or arise after the effective date of this Assignment.

8. **Counterparts**. To facilitate execution, this Assignment may be executed in as many counterparts as may be required. It shall not be necessary that the signatures on behalf of all parties appear on each counterpart hereof. All counterparts hereof shall collectively constitute a single agreement.

9. **Covenants of Further Assurances**. Assignor and Assignee each agree to execute such other documents and perform such other acts as may be necessary or desirable to effectuate this Assignment.

**[SIGNATURES TO FOLLOW ON NEXT PAGE]**

IN WITNESS WHEREOF, Assignor and Assignee have duly executed this Memorandum of Assignment of Option on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**ASSIGNEE:**

SUCCESSOR AGENCY TO THE FORMER  
MORGAN HILL REDEVELOPMENT  
AGENCY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ASSIGNOR:**

MORGAN HILL ECONOMIC  
DEVELOPMENT CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE 1**

**Legal Description of Option Property**

The land referred to in this Memorandum is situated in the State of California, County of Santa Clara, City of Morgan Hill, and is described as follows:

**[To be inserted by Escrow Holder]**

## EXHIBIT B-2

MHEDC Assignment Memorandum*[Following for consideration]*

RECORDING REQUESTED BY:  
WHEN RECORDED MAIL TO

City Clerk, City of Morgan Hill  
1735 Peak Avenue  
Morgan Hill, CA 95037

---

(Above Space for Recorder's Use Only)

Memorandum of Assignment of Option

APN 726-14-001

To be recorded without fee per Government Code Section 27383

The undersigned grantor declares:  
Exempt from Documentary Transfer Tax pursuant  
to Section 11922 of the Revenue and  
Taxation Code, as amended  
County of Santa Clara

This Memorandum of Assignment of Option ("**Memorandum**") is effective upon recordation and is entered into by and between MORGAN HILL ECONOMIC DEVELOPMENT CORPORATION ("**Assignor**"), and SUCCESSOR AGENCY TO THE FORMER MORGAN HILL REDEVELOPMENT AGENCY ("**Assignee**"), who agree as follows:

1. The "**Option Property**" to which this Memorandum relates is that certain parcel of real property commonly known as 95 East Third Street, Morgan Hill, CA APN 726-14-001 as more particularly described in Schedule 1 attached hereto.

2. Assignor is the current holder of the option to purchase the Option Property ("**Option**") originally granted by Llagas Valley Investments LLC, a California Limited Liability Company ("**Optionor**") under, and pursuant to the terms and conditions of, that certain Option Agreement, dated May 24, 2010 ("**Option Agreement**"), between Optionor and Morgan Hill Redevelopment Agency ("**RDA**"), and evidenced by that certain Memorandum of Option ("**Option Memorandum**") between Optionor and Original Optionee, dated May 24, 2010 and recorded in the Official Records of Santa Clara County on June 18, 2010 as Document 20746376.

3. Assignor acquired the Option pursuant to a Four Party Option Assignment Agreement, among Assignor, the City of Morgan Hill (“**City**”), Santa Clara Valley Transit Authority (fka Santa Clara County Transit District) and the RDA, dated September 15, 2011 (“**City Assignment**”). MHEDC’s acquisition was evidenced by that certain Memorandum of Assignment of Option (“**City Assignment Memorandum**”) between MHEDC and City, dated September 15, 2011 and recorded in the Official Records of Santa Clara County on September 23, 2011 as Document 21334322.

4. The City acquired the Option pursuant to an Option Assignment Agreement between the City and the RDA, dated March 16, 2011 (“**RDA Assignment**”). The City’s acquisition was evidenced by that certain Memorandum of Assignment of Option (“**RDA Assignment Memorandum**”) between the City and RDA, dated March 16, 2011 and recorded in the Official Records of Santa Clara County on March 21, 2011 as Document 21116611

5. Assignor and Assignee have agreed to give notice of said assignment from Assignor to Assignee by recording this Memorandum.

**[SIGNATURES TO FOLLOW ON NEXT PAGE]**

IN WITNESS WHEREOF, Assignor and Assignee have duly executed this Memorandum of Assignment of Option on this \_\_\_\_ day of \_\_\_\_\_, 2015.

**ASSIGNEE:**

SUCCESSOR AGENCY TO THE FORMER  
MORGAN HILL REDEVELOPMENT  
AGENCY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ASSIGNOR:**

MORGAN HILL ECONOMIC  
DEVELOPMENT CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(Name of Notary)

notary public, personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(Name of Notary)

notary public, personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)

**SCHEDULE 1**

**Legal Description of Option Property**

The land referred to in this Memorandum is situated in the State of California, County of Santa Clara, City of Morgan Hill, and is described as follows:

**[To be inserted by Escrow Holder]**

**EXHIBIT C-1**

**City Assignment**

*[to be attached]*

**EXHIBIT C-2**

**City Assignment Memorandum**

*[to be attached]*

**EXHIBIT D-1**

**RDA Assignment**

*[to be attached]*

**EXHIBIT D-2**

**RDA Assignment Memorandum**

*[to be attached]*

## EXHIBIT E-1

**ASSIGNMENT OF OPTION AGREEMENT**

APN 726-14-001

This Assignment of Option Agreement (“**Assignment**”) is dated and effective \_\_\_\_\_, 2015 and is entered into by and between SUCCESSOR AGENCY TO THE FORMER MORGAN HILL REDEVELOPMENT AGENCY (“**Assignor**”), and CITY VENTURES, INC., a \_\_\_\_\_ corporation (“**Assignee**”).

**RECITALS:**

A. Assignor and Assignee entered into that certain Agreement of Purchase and Sale of Option and Initial Escrow Instructions dated as of \_\_\_\_\_, 2015 (“**Agreement**”), whereby Assignor has agreed to sell to Assignee, and Assignee has agreed to purchase from Assignor, the option (“**Option**”) to purchase the improved real property commonly known as 95 East Third Street, Morgan Hill, California, APN 726-14-001, as more particularly described in Schedule 1 attached hereto (the “**Option Property**”), originally granted by Llagas Valley Investments LLC, a California Limited Liability Company (“**Optionor**”) under, and pursuant to the terms and conditions of, that certain Option Agreement, dated May 24, 2010 (“**Option Agreement**”), between Optionor and Morgan Hill Redevelopment Agency (“**RDA**”), and evidenced by that certain Memorandum of Option (“**Option Memorandum**”) between Optionor and Original Optionee, dated May 24, 2010 and recorded in the Official Records of Santa Clara County on June 18, 2010 as Document 20746376.

B. As described more fully in the Agreement, Assignor has become the owner of the Option.

C. Capitalized terms not otherwise defined in this Assignment shall have the same meaning in the Agreement.

**AGREEMENT:**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

**1. Assignment of Option.** Assignor hereby sells and assigns unto Assignee, and its successors and assigns, all of Assignor’s right, title and interest in and to the Option. By execution hereof, Assignee agrees to assume and be bound by Assignor’s obligations accruing on or after the date hereof under the Option.

**2. Memorandum of Assignment.** Concurrently herewith, to evidence and provide record notice of the assignment of the Option, the parties are entering into a Memorandum of Assignment of Option (“**Memorandum**”), and will have it recorded in the Official Records of Santa Clara County, California. Any conflict between the provisions of this Assignment and the Memorandum shall be governed by this Assignment.



3. **Disclaimer.** Except for Assignor's express representations and warranties herein and in the Agreement, ASSIGNOR HEREBY DISCLAIMS, AND ASSIGNEE, BY ITS EXECUTION OF THIS ASSIGNMENT HEREBY ACKNOWLEDGES THAT ASSIGNOR HAS DISCLAIMED, ALL REPRESENTATIONS AND WARRANTIES RELATING TO THE OPTION AND THE OPTION PROPERTY INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY PROVIDED HEREIN AND IN THE AGREEMENT, ASSIGNEE IS ACQUIRING THE OPTION ON AN "AS-IS, WHERE-IS" BASIS. Notwithstanding the foregoing, Assignor represents and warrants that it is transferring to Assignee all of its interests in and to the Option.

4. **Option and Option Property Condition Waiver.** Assignee hereby waives its right to recover from Assignor, and the elected officials, officers, employees, agents and predecessors of Assignor (collectively, "**Assignor's Representatives**"), and hereby releases Assignor and Assignor's Representatives from, any and all damages, losses, liabilities, costs or expenses whatsoever (including attorneys' fees and costs) and claims therefor, whether direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way arising out of or connected with (i) the enforceability, or lack of enforceability, of the Option Agreement, (ii) the physical condition of the Option Property, (iii) the failure of any improvements or components of the Option Property to comply with any law or regulation applicable thereto, and (iv) the environmental condition of the Option Property. The foregoing waiver and release shall exclude only those losses, liabilities, damages, costs or expenses, and claims therefor, arising from or attributable to (x) a material matter actually known to Assignor (excluding constructive notice) and (1) not disclosed to Assignee and (2) not discovered by Assignee prior to the Close of Escrow, and (y) any breach by Assignor of its express representations or warranties under the Agreement or this Assignment. In connection with foregoing waiver and release, Assignee expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

---

Assignee's Initials

5. **Governing Law.** This Assignment and all other instruments referred to herein shall be governed by, and shall be construed in accordance with, the laws of the State of California.

6. **Successors and Assigns.** This Assignment and the terms and provisions hereof shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of Assignor and Assignee.

7. **Survival.** The terms and conditions of this Assignment shall survive the Close of Escrow.

8. **Indemnification.** Assignee shall indemnify, defend (with counsel satisfactory to Assignee) and hold Assignor, its elected officials, officers, employees and agents harmless from and against any and all litigation, loss cost, damage, claim, demand, expense or liability whatsoever (including without limitation, reasonable attorneys' fees, charges and costs) (collectively, "**Damages**") arising out of or relating to the Option which Damages occur or arise after the effective date of this Assignment.

9. **Counterparts.** To facilitate execution, this Assignment may be executed in as many counterparts as may be required. It shall not be necessary that the signatures on behalf of all parties appear on each counterpart hereof. All counterparts hereof shall collectively constitute a single agreement.

10. **Covenants of Further Assurances.** Assignor and Assignee each agree to execute such other documents and perform such other acts as may be necessary or desirable to effectuate this Assignment.

**[SIGNATURES TO FOLLOW ON NEXT PAGE]**

IN WITNESS WHEREOF, Assignor and Assignee have duly executed this Memorandum of Assignment of Option on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**ASSIGNEE:**

CITY VENTURES, INC., a \_\_\_\_\_  
corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ASSIGNOR:**

SUCCESSOR AGENCY TO THE FORMER  
MORGAN HILL REDEVELOPMENT  
AGENCY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE 1**

**Legal Description of Option Property**

The land referred to in this Memorandum is situated in the State of California, County of Santa Clara, City of Morgan Hill, and is described as follows:

**[To be inserted by Escrow Holder]**

**EXHIBIT E-2**

RECORDING REQUESTED BY:  
WHEN RECORDED MAIL TO

---

---

(Above Space for Recorder's Use Only)

**Memorandum of Assignment of Option**

**APN 726-14-001**

To be recorded without fee per Government Code Section 27383

The undersigned grantor declares:  
Exempt from Documentary Transfer Tax pursuant  
to Section 11922 of the Revenue and  
Taxation Code, as amended  
County of Santa Clara

This Memorandum of Assignment of Option ("**Memorandum**") is effective upon recordation and is entered into by and between SUCCESSOR AGENCY TO THE FORMER MORGAN HILL REDEVELOPMENT AGENCY ("**Assignor**"), and CITY VENTURES, INC., a \_\_\_\_\_ corporation ("**Assignee**"), who agree as follows:

1. The "**Option Property**" to which this Memorandum relates is that certain parcel of real property commonly known as 95 East Third Street, Morgan Hill, CA APN 726-14-001 as more particularly described in Schedule 1 attached hereto.

2. Assignor is the current holder of the option to purchase the Option Property ("**Option**") originally granted by Llagas Valley Investments LLC, a California Limited Liability Company ("**Optionor**") under, and pursuant to the terms and conditions of, that certain Option Agreement, dated May 24, 2010 ("**Option Agreement**"), between Optionor and Morgan Hill Redevelopment Agency ("**RDA**"), and evidenced by that certain Memorandum of Option ("**Option Memorandum**") between Optionor and Original Optionee, dated May 24, 2010 and recorded in the Official Records of Santa Clara County on June 18, 2010 as Document 20746376.

3. Assignor acquired the Option pursuant to an Assignment of Option Agreement, between Assignor and the Morgan Hill Economic Development Corporation ("**MHEDC**"), dated \_\_\_\_\_, 2015 ("**MHEDC Assignment**"). Assignor's acquisition was evidenced by that certain Memorandum of Assignment of Option ("**MHEDC Assignment Memorandum**") between Assignor and MHEDC, dated \_\_\_\_\_, 2015 and recorded in the Official

Records of Santa Clara County on \_\_\_\_\_, 2015 as Document \_\_\_\_\_.

4. MHEDC acquired the Option pursuant to a Four Party Option Assignment Agreement, among MHEDC, the City of Morgan Hill ("**City**"), Santa Clara Valley Transit Authority (fka Santa Clara County Transit District) and the RDA, dated September 15, 2011 ("**City Assignment**"). MHEDC's acquisition was evidenced by that certain Memorandum of Assignment of Option ("**City Assignment Memorandum**") between MHEDC and City, dated September 15, 2011 and recorded in the Official Records of Santa Clara County on September 23, 2011 as Document 21334322.

5. The City acquired the Option pursuant to an Option Assignment Agreement between the City and the RDA, dated March 16, 2011 ("**RDA Assignment**"). The City's acquisition was evidenced by that certain Memorandum of Assignment of Option ("**RDA Assignment Memorandum**") between the City and RDA, dated March 16, 2011 and recorded in the Official Records of Santa Clara County on March 21, 2011 as Document 21116611

6. Assignor and Assignee have agreed to give notice of said assignment from Assignor to Assignee by recording this Memorandum.

**[SIGNATURES TO FOLLOW ON NEXT PAGE]**

IN WITNESS WHEREOF, Optionor and Optionee have duly executed this Memorandum of Assignment of Option on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**ASSIGNEE:**

CITY VENTURES, INC., a \_\_\_\_\_  
corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ASSIGNOR:**

SUCCESSOR AGENCY TO THE FORMER  
MORGAN HILL REDEVELOPMENT  
AGENCY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(Name of Notary)

notary public, personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(Name of Notary)

notary public, personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)

**SCHEDULE 1**

**Legal Description of Option Property**

The land referred to in this Agreement is situated in the State of California, County of Santa Clara, City of Morgan Hill, and is described as follows:

**[To be inserted by Escrow Holder]**

**EXHIBIT E**

**List of Documents and Materials**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Option Property as used herein, means the subject Option Property and not any surrounding Option Property. Buyer may not rely on any reports or studies because they are not issued in Buyer's name.

**OPTION AGREEMENT**

By  
and  
between  
LLAGAS VALLEY INVESTMENTS, LLC,  
a California Limited Liability Company  
“Optionor”

AND

MORGAN HILL REDEVELOPMENT AGENCY,  
a Public Body, Corporate and Politic  
“Optionee”

Dated as of  
May 24, 2010

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## OPTION AGREEMENT

This Option Agreement ("Agreement") is made as of this 24 day of May, 2010 (the "Effective Date") by and between LLAGAS VALLEY INVESTMENTS LLC, a California Limited Liability Company ("Optionor"), and MORGAN HILL REDEVELOPMENT AGENCY, a public body, corporate and politic, or its assignee ("Optionee"), for the sale of the real property described below.

### 1.0 ARTICLE 1 – GRANT OF OPTION

Section 1.1 Option Subject to and conditioned upon satisfaction of the conditions precedent set forth at Article 4 below, Optionor grants to Optionee an option ("Option") to purchase a certain improved parcel of real property commonly known as 95 East Third Street, Morgan Hill, California, APN 726-14-001, as more particularly described in Exhibit A attached hereto and by reference made a part hereof (the "Property") upon all of the terms, covenants and conditions set forth in this Agreement. (For the purposes of this Agreement, the Property may sometimes be referred to as the "Option Property").

Section 1.2 Memorandum Of Option. Upon execution of this Agreement, the parties shall execute and deliver to Escrow Holder for recordation in the office of the Santa Clara County recorder, a Memorandum of Option in the form attached hereto as Exhibit B referring to this Agreement ("Memorandum of Option"). The Memorandum of Option shall be recorded concurrently with the release of the Option Payment to Optionor, as set forth in Section 2.2 below.

Section 1.3 Quitclaim Deed. If this Agreement is terminated, Optionee agrees, if requested by Optionor, to execute, acknowledge and deliver to Escrow Holder within ten (10) days after termination, a quitclaim deed and such other documents as may reasonably be required by the Title Company to remove the cloud of this Option from the Property.

### 2.0 ARTICLE 2 – TERM AND CONSIDERATION

Section 2.1 Term. Subject to the terms and conditions of this Agreement, the term of the Option ("Option Term") shall commence on the fifth (5<sup>th</sup>) business day after the Effective Date hereof (the "Commencement Date") and, unless earlier exercised or terminated pursuant to the terms and conditions set forth below, terminate at midnight, on April 30, 2016 (the "Termination Date").

Section 2.2 Option Consideration. As consideration for this Option, Optionee shall, on or before the Commencement Date hereof deposit with Old Republic Title Company, 17485 Monterey Street, Suite 101, Morgan Hill, CA 95037 (the "Escrow Holder"), Escrow Number 0625006442 (the "Escrow") the amount of one hundred thousand dollars (\$100,000) in good, same day funds (the "Option Payment"). The Option Payment shall be released by Escrow Holder to Optionor as provided at Section 4.1 below, and shall be nonrefundable except in the event of a Default as defined at Section 13.10 below by Optionor or an obligation return the Option Consideration in accordance with Section 8.2 below.

### 3.0 ARTICLE 3 – PURCHASE PRICE

Section 3.1 Amount. The purchase price (the "Purchase Price") for the Option Property shall be Two Million, Two Hundred Thousand Dollars (\$2,200,000), less the Option Payment in the amount of One Hundred Thousand Dollars (\$100,000) (Section 2.2) together with the One Hundred Thousand Dollars (\$100,000) Note Extension Consideration (Section 4.1) for a net Purchase Price of Two Million Dollars (\$2,000,000).

Section 3.2 Payment. The Purchase Price shall be paid as follows:

(a) The Option Consideration in the amount of One Hundred Thousand Dollars (\$100,000) together with the One Hundred Thousand Dollar (\$100,000) Note Extension Consideration (as described below) shall be credited against the gross Purchase Price at Closing.

(b) The balance of the Purchase Price, subject to any adjustment or prorations in accordance with Section 10.4 below, shall be paid by Optionee in cash into Escrow in good, same day funds, on or before the Closing Date.

#### 4.0 ARTICLE 4 – CONDITIONS PRECEDENT

Section 4.1 Extension of Note Maturity Date. The parties to this Agreement acknowledge that the Option Property is encumbered by the lien of a Deed of Trust in favor of South Valley National Bank dated July 8, 2004 and recorded on July 15, 2004 in Official Records under Recorder's Serial No. 17897794 (the "Deed of Trust"), as security for that certain Term Note dated July 8, 2004 in the original principal sum of Eight Hundred and Fifty Thousand Dollars (\$850,000) (the "Note") by Optionor in favor of South Valley National Bank (the "Note Holder"). The Maturity Date of the Note is presently July 8, 2014. As a condition precedent to the rights and obligations of the parties hereunder, Optionor shall obtain from the Note Holder and deliver to Optionee on or before the Commencement Date hereof, an extension of the term of the Note to April 30, 2016 so that the Note Maturity Date coincides with the Termination Date of the Option Term. Concurrent with the extension of the Note Maturity Date, Optionor shall make a principal reduction payment of the Note Holder in an amount not less than Three Hundred and Fifty-Five Thousand Dollars (\$355,000). As consideration for said extension and principal pay down (the "Note Extension Consideration") Optionee shall deposit with Escrow Holder the sum of One Hundred Thousand Dollars (\$100,000). Upon receipt of confirmation of said extension and principal pay down, Optionee shall instruct Escrow Holder to release the Note Extension Consideration to Optionor. It is the intent of the parties hereto that confirmation of said extension and principal pay down occur prior to or concurrently with the release by Escrow Holder of the Option Payment and the Note Extension Consideration so that both the Option Payment and Note Extension Consideration shall be concurrently released by Escrow Holder to Optionor. If the foregoing condition precedent is not satisfied or waived in writing within ninety (90) days after the Effective Date of this Agreement, then this Agreement shall not be effective and the 2007 Option Agreement shall remain in full force and effect.

Section 4.2 Termination of 2007 Option. Concurrent with the execution of this Agreement, Optionor, Optionee and Depot Center Morgan Hill, LLC, a California limited liability company ("2007 Optionee") under that certain Option Agreement dated as of August 31, 2007 ("2007 Option Agreement"), shall enter into and execute an Option Termination Agreement, terminating the 2007 Option Agreement, which termination shall be effective on or

before the Commencement Date of this Option. Notwithstanding the other provision of this Agreement, this Agreement shall not be effective, and the 2007 Option Agreement shall not be terminated, unless and until 2007 Optionee receives the Option Termination Payment described in Section 3 of the Option Termination Agreement, in cash or immediately available funds.

Section 4.3 Amendment of Lease. The parties to the Agreement acknowledge that the Option Property is subject to that certain lease dated as of May 1, 2006 (the Lease”), and that as condition precedent to the rights and obligations of the parties hereunder, concurrent with the execution of this Agreement, Optionor and Tenant will enter into a Lease Amendment making the following material changes to the Lease:

(a) Under Section 3 of the Lease, the Term shall be extended to April 30, 2016 subject to early termination by Landlord (as defined in the Lease) in connection with the exercise of this Option, upon not less than one hundred eighty (180) days prior written notice. Tenant, as a related entity to Original Optionee which will share in the consideration paid by Optionee under the above reference Option Termination Agreement, will waive all relocation benefits in the event the Option is exercised by Optionee or its assignee;

(b) Under Section 5 of the Lease, the Minimum Monthly Rent for the period of May 1, 2014 through April 30, 2016 shall be specified in the Lease Amendment in an amount to be agreed upon by Optionor and Tenant;

(c) During the Option Term, Tenant shall not enter into any new sublease, license or occupancy agreements or amend any existing sublease, license or occupancy agreement, the term of which extends beyond November 30, 2011 and which is not otherwise terminable upon 30 days notice, without inclusion of an early termination provision as set forth at Section 4.3(a) above and under no circumstances shall the term of any sublease, license or occupancy agreement extend beyond the term of the master Lease. Tenant shall further agree to deliver copies of any such new or amended sub-leases, licenses or occupancy agreements to Optionee;

(d) The Addendum to Lease dated as of May 1, 2006 shall be stricken in its entirety and the option agreement attached thereto as Exhibit A shall likewise be stricken in its entirety and neither said Addendum nor option agreement shall be of any further force and effect, nor shall Tenant have any further rights thereunder;

(e) Optionor and Tenant will agree that further amendments may be made to the Lease to effectuate the matters set forth in sub-paragraphs (a) through (e) above.

Section 4.4 Consent of Note Holder. In accordance with the due on sale or transfer clause in the Note, on or before the Effective Date of this Agreement, Optionor shall obtain Note Holder’s written consent to this Option, which consent shall be a condition precedent to the rights and obligations of the parties hereto.

Section 4.5 Courtesy Notice. On or before the Effective Date of this Agreement, Optionor shall use commercially reasonable efforts to obtain from Note Holder an agreement to provide a courtesy notice to Optionee, at the address designed at Section 13.7 below of any default by Optionor under the Deed of Trust. Said courtesy notice will be supplemental and in addition to the Notice of Sale and Default given pursuant to Civil Code Section 2924b.



## 5.0 ARTICLE 5 – EXERCISE OF OPTION

Section 5.1 Notice. Provided that Optionee is not in material default under this Agreement, this Option may be exercised by Optionee or its assignee at any time during the Option Term described in Section 2.1. The Option shall be exercised by written notice (the “Option Notice”) delivered to Optionor and Tenant, unconditionally stating Optionee’s exercise of the Option. Said notice shall identify a Closing Date, which Closing Date shall be a date which is not less than one hundred and eighty days (180) from and after the delivery of the Option Notice, unless the parties agree in writing to an earlier Closing Date. The Option Notice shall be delivered to Optionor and Tenant in the manner provided for in Section 13.7 below. Optionee shall deliver a copy of the Option Notice to the Escrow Holder concurrently with the delivery of the Option Notice to Optionor. If requested by Optionee in the Option Notice, Optionor shall give Tenant notice of termination of the Lease, as provided at Section 4.3(a) above. If requested by Optionee in the Option Notice or at any time thereafter until thirty (30) days prior to the Closing Date, Optionor shall obtain from Tenant and request that Tenant obtain from its subtenants, estoppel certificates in a form reasonably acceptable to Optionor, to be deposited into Escrow. Time is expressly declared to be of the essence with respect to the exercise of the Option by Optionee.

Section 5.2 Binding Agreement. Upon due and timely delivery of the Option Notice, Optionee or its assignee shall become obligated to buy and Optionor shall become obligated to sell, the Option Property, upon and subject to the terms and conditions of this Agreement. If the Option is not timely exercised as provided in Section 5.1 above, the Option shall irrevocably terminate, and all Option Consideration made or given by Optionee including the Note Extension Consideration shall be retained by Optionor.

## 6.0 ARTICLE 6 – REPRESENTATIONS AND WARRANTIES

Section 6.1 Representations of Optionor. As an inducement to Optionee to enter into this Agreement, Optionor hereby makes the following representations and warranties to Optionee as of the Effective Date and as of the Closing.

(a) Due Authority. Optionor is a California Limited Liability Company, duly organized, validity existing and in good standing under the laws of the State of California, and has the requisite power and authority to: (i) enter into this Agreement, and (ii) sell the Property. The individual(s) executing this Agreement on behalf of Optionor is duly authorized to sign on its behalf and bind Optionor to the obligations created herein. The execution and delivery hereof and the performance by Optionor of its obligations hereunder will not violate or constitute an event of default under the terms and provisions of any agreement, document, trust, indenture, bond, note, or other evidence of indebtedness, or any mortgage, deed of trust, loan, partnership, or lease agreement or license, or instrument affecting the Property or to which Optionor is a party or by which Optionor is bound;

(b) Binding Obligation. This Agreement is a valid and binding obligation of Optionor, subject only to applicable bankruptcy insolvency, reorganization or other similar laws affecting the rights of creditors generally.

(c) Environmental. Optionor has no knowledge of: (i) the presence of any Hazardous Substances (as defined below) at, on, under and/or affecting the Property; (ii) any spills, releases, discharges, or disposal of Hazardous Substances that have occurred or are presently occurring on or onto the Property; (iii) any spills or disposal of Hazardous Substances that have occurred or are occurring off the Property as a result of any construction on, or operation in use of the Property; (iv) the presence of any PCB transformers serving or stored on the Property; (v) underground storage tanks located on the Property; or (vi) any failure to comply with all applicable local, state and federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and disposal of any Hazardous Substances in connection with the operation and use of the Property. As used in this Agreement, "Hazardous Substances" shall mean any chemical, compounds, material, substance, or other matter that: (a) is defined as a hazardous substance, hazardous material, hazardous waste or toxic substance under any Hazardous Materials Law; (b) is controlled or governed by any Hazardous Materials Law or gives rise to any reporting, notice or publication requirement hereunder, or gives rise to any liability, responsibility or duty on the part of any party hereto with respect to any third person; or (c) Any asbestos or asbestos-containing material. As used in this Agreement, "Hazardous Substances Laws" mean any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law" relating to Hazardous Substances including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Toxic Substance Control Act, California Health & Safety Code section 25117, sections 6680-6685 of Title 22 of the California Administrative Code, Division 4, Chapter 30, and any amendments to the foregoing, and any similar federal, state or local laws, ordinances, rules, decrees, orders or regulations.

(d) Compliance With Law. Optionor has no knowledge of and has received no notice from any governmental authority that existing uses of the Property are not in full compliance with all applicable zoning laws (and applicable variances) and any other local, municipal, regional, state or federal requirements. Optionor has not received notice from any governmental authority that the Property is not in full compliance with any applicable environmental law or regulation except as follows: None.

(e) No Other Conveyance. Optionor has not granted any options or any other rights to acquire fee title to the Property, other than as set forth in this Option Agreement.

(f) No Litigation. Optionor has no knowledge of any pending, threatened or contemplated actions, suits, arbitrations, claims or proceedings at law or in equity affecting the Property or in which Optionor is or will be a party by reason of Optionor's ownership of the Property.

(g) Foreign Persons. Optionor is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended. At the Closing, Optionor shall deliver an executed certificate in the applicable form set forth in Treasury Regulation Section 1.1445-2(b)(2).

(h) Disclosure Documents. Upon the request of Optionee, and from time to time during the Option Term, Optionor shall make available to Optionee the property information identified as Exhibit C.

Section 6.2 Representations Of Optionee. As an inducement to Optionor to enter into this Agreement, Optionee represents, warrants and covenants as of the Effective Date and as of the Closing as follows:

(a) Due Authority. Optionee has obtained approval of the Board of the Morgan Hill Redevelopment Agency authorizing the Agency Director to execute this Option Agreement on its behalf, and approve the recordation of the Memorandum of Option and the Certificate of Acceptance thereof.

(b) Binding Obligation. This Agreement is a valid and binding obligation of Optionee.

Section 6.3 Survival. The truth, accuracy, and completeness of each of the representations, warranties and covenants of Optionee and of Optionor set forth within Article 6 shall constitute a condition precedent to the obligations of Optionor and Optionee, respectively, hereunder. All representations and warranties herein set forth shall survive the Close of Escrow for a period of one year. Optionee and Optionor (each an Indemnitor Party) agree to indemnify, defend, and hold harmless the other party (the "Indemnitee Party") from any claim, demand, liability, loss or cost (including reasonable attorneys' fees and costs) (collectively, "claims") which the Indemnitee Party may sustain because of any material breach of or inaccuracy in the respective representations, warranties and covenants of Optionor and Optionee set forth in this Article 6, provided that written notice of any such claim is given by the Indemnitee Party to the Indemnitor Party prior to the expiration of said period of one year from the Close of Escrow.

## 7.0 ARTICLE 7 – CONDITION OF OPTION PROPERTY AND RISK OF LOSS

Section 7.1 Risk Of Loss. Optionor shall bear the risk of any loss or damage to the Property until the Close of Escrow, except for any loss or damage caused, occasioned by, or arising out of Optionee's, or its agents', representatives', employees' or contractors' negligence or willful misconduct. The risk of loss or damage to the Property shall pass to Optionee upon the recordation of the grant deed on the Closing Date.

Section 7.2 Waiver Of Natural Hazards. Optionee further acknowledges that "Natural Hazards" described in the following California Code Sections (The "Natural Hazard Laws") may affect the Option Property: Government Code Sections 8589.4; 8589.3; Government Code Sections 51183.4, 51183.4 (Fire Hazard Severity Zone); Public Resource Code Section 2621.9 (Earthquake Fault Zone); (Seismic Hazard Zone); and Public Resource Code Section 4136 (Wildlands Area). Optionee acknowledges and agrees that Optionee has had the opportunity independently to evaluate and investigate whether any or all of such Natural Hazards affect the Option Property and Optionor shall have no liabilities or obligations with respect thereto. Without limiting the foregoing, Optionee acknowledges and agrees that Optionee knowingly and intentionally waives and releases Optionor from any disclosures, obligations or requirements of Optionor with respect to Natural Hazards, including without limitation, any disclosures,

obligations or requirements under the aforementioned code sections or under Article 1.5 (Section 1102, et seq.) of the California Civil Code.

**Section 7.3 Right to Enter.** During the Option Term, Optionee and its designated agents, representatives and independent contractors shall have the right to enter upon the Property for purposes of conducting such tests, assessments, surveys, engineering and other planning studies as Optionee deems necessary relative Optionee's proposed development thereof in the event Property is purchased upon exercise of the Option. Optionee shall not conduct any invasive testing at the Property without Optionor's prior written consent, which consent shall not be unreasonably withheld or delayed by Optionor. Optionee agrees to repair any damage or disturbance it or its agents, representatives or independent contractors shall cause to the Property and return it in the same general condition as existed prior to any such tests, surveys, or investigations and shall indemnify, defend, protect and hold Optionor harmless from any and all claims, liens, costs, damages, expenses, losses, attorney's fees and costs and liabilities (including, but not limited to claims of mechanics liens) incurred or sustained by, or levied or accessed against, Optionor arising out of or in connection with any such entry by Optionee or any of his agents, representatives or independent contractors pursuant to this paragraph.

**Section 7.4 Leases and Other Contractual Obligations.** During the Option Term, Optionor agrees not to (i) execute any new or amend or extend any existing lease, occupancy agreements, license agreements or other contracts or commitments relating to the use and occupancy of any portion of the Property, the term of which extends beyond November 30, 2011 unless the same are terminable upon one hundred and eighty (180) days written notice, (ii) amend, modify or extend any service or maintenance contracts or commitments affecting any portion of the Property, that are not terminable after November 30, 2011 on thirty (30) days written notice, or (iii) further encumber the Property without the consent of Optionee. Optionor further agrees to provide Optionee with copies of all such new or amended leases, occupancy agreements or service contracts.

## 8.0 ARTICLE 8 – TITLE

**Section 8.1 Conditions Of Title.** Upon and subject to Close of Escrow, Optionor shall convey fee title to the Property to Optionee or its assignee by grant deed subject only to a lien for real estate taxes and assessments not delinquent, and such other encumbrances, easements, restrictions, rights and conditions of record approved by Optionee as provided in Section 8.2 (the "Permitted Exceptions").

**Section 8.2 Preliminary Title Report.** Optionee has obtained from Old Republic Title Company (the "Title Company"), a preliminary title report dated July 23, 2009 (the "Preliminary Title Report") covering the Property, a copy of which is attached hereto as Exhibit E. Exceptions Nos. 1,2,3,4 and 5 are deemed to be "Permitted Exceptions." At the time Optionee delivers the Option Notice, and at any time and from time to time thereafter and prior to Close of Escrow, Optionee may give written objections to matters of title first appearing in any updated title commitment issued after the Preliminary Title Report (collectively "Subsequent Title Exceptions"). In the event Optionee shall advise Optionor in writing of any disapproved Subsequent Title Exception, Optionor shall have twenty (20) days (the "Cure Period") after the receipt of such notice in which to correct, cure or eliminate such disapproved Subsequent Title Exception. If by the end of such Cure Period, Optionor advises Optionee in writing that despite

the exercise by Optionor of good faith diligent efforts to do so, Optionor is unable to remove or cure each such disapproved Subsequent Title Exception to Optionee's reasonable satisfaction, then Optionee shall, within ten (10) days after the end of such Cure Period, notify Optionor in writing either (i) that Optionee agrees to waive such disapproved Subsequent Title Exception(s), at which point such exception(s) shall be deemed a Permitted Exception, or (ii) that Optionee declares Optionor to be in breach of this Agreement in which event Optionee's sole and exclusive remedy for such breach shall be to terminate this Agreement by giving written notice of termination to Optionor and Escrow Holder where upon the Option Consideration and the Note Extension Consideration previously paid by Optionee shall be returned to Optionee, and no party shall have any further obligation or liability to the other party except for those matters which expressly survive the termination of this Agreement. Notwithstanding anything to the contrary contained elsewhere in this Agreement, Optionor shall be obligated to cure or satisfy all deeds of trust, judgment liens, mechanic's liens, tax liens, and any other monetary encumbrances at or prior to Close of Escrow, and if not otherwise cured or satisfied, the proceeds of the Purchase Price shall be used at Close of Escrow for such purposes.

Section 8.3 Title Insurance. Optionee's obligations to close escrow shall be subject to the title company issuing, upon payment by Optionee of its regularly scheduled premium at the close of escrow, an ALTA Owner's Policy of title insurance (the "Title Policy") in the amount of the Purchase Price showing title to the Property vested in Optionee subject only to the Permitted Exceptions.

## 9.0 ARTICLE 9 – CONDITIONS

Section 9.1 Optionee's Conditions. After Optionee's due and timely exercise of the Option, Optionee's obligation to purchase the Property is expressly subject to fulfillment of each of the following conditions precedent at the Close of Escrow or at such other time set forth herein:

- (a) Conditions Precedent. Optionor shall have satisfied its obligations under Article 4.
- (b) Title. As of the Close of Escrow, the Title Company shall have committed to issue the Title Policy to Optionee subject only to the Permitted Exceptions.
- (c) Optionor's Representations. All of Optionor's representations and warranties contained herein shall be true and correct in all material respects as of the date when made and as of the Close of Escrow.
- (d) Optionor's Covenants. Optionor's timely performance of all of its covenants and obligations contained in this Agreement.

Section 9.2 Optionor's Conditions. After Optionee's due and timely exercise of the Option, Optionor's obligation to sell the Property to Optionee is expressly subject to fulfillment of each of the following conditions precedent at the Close of Escrow or at such other time set forth herein:

- (a) Conditions Precedent. Optionee shall have satisfied his obligations under Article 4.

(b) Certificate of Acceptance. If the Option is exercised by the Morgan Hill Redevelopment Agency, Optionee has deposited into Escrow a properly executed Certificate of Acceptance.

(c) Optionee's Representations. All of Optionee's representations and warranties contained herein shall be true and correct in all material respects as of the date when made and as of the Close of Escrow.

(d) Optionee's Exercise of the Option and Performance. The timely exercise by Optionee of the Option and the timely performance by Optionee of all of its covenants and obligations contained in this Agreement, including, but not limited to the payment by Optionee to Optionor of the balance of the Purchase Price at Close of Escrow.

## 10.0 ARTICLE 10 – CLOSING

Section 10.1 Time. The "Closing Date" or "Close of Escrow" shall mean and refer to the date of the close of escrow, which shall occur through the Escrow Holder on or before the date set in Section 5.1 for delivery of the payment required from Optionee to close the escrow and the recordation of the grant deed.

### Section 10.2 Deposit Of Documents And Money.

(a) At least one (1) business day before the Closing Date, Optionor shall Deposit with Escrow Holder:

- (i) A duly executed and acknowledged grant deed conveying the Property to Optionee;
- (ii) Any estoppel certificates requested in accordance with section 5.1;
- (iii) Written instructions to the Escrow Holder instructing the Escrow Holder to close the escrow in accordance with the terms of this Agreement;
- (iv) Any other documents in Optionor's possession reasonably requested by Optionee or the Escrow Holder as necessary to consummate the transaction including, but not limited to, any statement of information requested by the Escrow Holder.

(b) On or before the Closing Date, Optionor shall deliver to Optionee outside of escrow, to the extent in Optionor's possession or reasonably available to Optionor, all original contracts to be assumed by Optionee, any on all assignable licenses and permits relating to the Property, and any unpaid utility bills.

(c) At least one (1) business day before the Closing Date, Optionee shall Deposit or caused to be Deposited into escrow;

- (i) The cash balance of the Purchase Price increased or reduced, as the case may be, by Optionee's share of the closing costs, and other prorrations;
- (ii) A Certificate of Acceptance, if required by Section 9.2(b).

(iii) Written instructions to the Escrow Holder instructing the Escrow Holder to close the Escrow in accordance with the terms of this Agreement; and

(iv) Any other documents or money required from Optionee or reasonably requested by Optionor or the Escrow Holder as necessary to consummate the transaction.

Section 10.3 Closing. Escrow shall be closed by:

(a) Recording the grant deed conveying the Property to Optionee or its assignee;

(b) Payment of the balance of the Purchase Price to Optionor, less Optionor's share of closing costs and prorations as required by this Agreement; and

(c) Obtaining from the Title Company for Optionee an ALTA Owner's Policy of title insurance in the amount of the Purchase Price showing title to the Property vested of record in Optionee or its assignee, subject only to the Permitted Exceptions.

Section 10.4 Prorations, and Adjustments.

The following shall be prorated and adjusted between Optionor and Optionee as of the date of Closing, except as otherwise specified:

(a) All ad valorem taxes and similar taxes/assessments relating to the Option Property for the most recently ascertainable tax year shall be prorated between Optionor and Optionee as of 11:59 p.m. on the day prior to the Closing Date. Adjustment shall be made promptly after the issuance of such ad valorem taxes and assessments for the fiscal year in which the Closing Date occurs and in the year prior to fiscal year of the Closing, if applicable, and a final adjustment shall be made by no later than the last day of the next fiscal year when the actual taxes are known. If the Morgan Hill Redevelopment Agency takes title to the Property at Closing, promptly thereafter it will deliver a letter to the Santa Clara County Tax Assessor, pursuant to Revenue and Taxation Codes § 5082.1 providing notification of the apportionment date and requesting cancellation of taxes pursuant to Revenue and Taxation Code § 5086.1.

(b) All ordinary operating expenses and charges of the Option Property shall be prorated at Closing effective as 11:59 p.m. on the date prior to the Closing Date. If the exact amount of any item to be prorated is not known as of the Closing Date, the proration shall be based upon reasonable estimate thereof made by Optionor and Optionee, and as soon after the Closing as an exact amount of the item is known, the proration shall be adjusted, if necessary, an appropriate cash adjustment shall be made by Optionor and Optionee if necessary.

(c) If any refund of ad valorem taxes or similar taxes/assessments relating to the Option Property is made after the Closing, the same shall be applied to the cost incurred in obtaining the same and the balance to Optionor.

Section 10.5 Closing Costs. Optionor shall be responsible for any documentary transfer taxes. Escrow fees shall be shared equally by Optionee and Optionor. Optionee and Optionor shall pay, respectively, the Escrow Holders customary charges to buyers and sellers for

document drafting and miscellaneous charges. All other closing costs shall be allocated between Optionor and Optionee consisted with the local custom. Except as otherwise expressly provided in this Agreement, if, as a result of no fault of Optionor or Optionee, Escrow fails to close, Optionee and Optionor shall share equally in all of Escrow Holders fees and charges.

#### 11.0 ARTICLE 11 – REAL ESTATE BROKERS

Section 11.1 Brokers. The parties represent and warrant to each other that no broker, agent, finder or other intermediary has in any way participated in any negotiation of the terms and conditions of the transaction contemplated herein or is entitled to any commission or fee in connection therewith.

#### 12.0 ARTICLE 12 – TERMINATION

Section 12.1 Notice. Prior to exercising the Option, Optionee may terminate this Option without cause or other reason by delivering written notice of termination to Optionor in accordance with Section 13.7 below (the “Notice of Termination”). Such termination shall be effective upon receipt by Optionor of the Notice of Termination. Optionee shall simultaneously deliver a copy of the Notice of Termination to the Escrow Holder. Within five (5) business days after receipt of such notice, Escrow Holder shall release to Optionor (without proration between Optionor and Optionee) any Option Consideration then held by Escrow Holder, and if requested by Optionor, Optionee shall duly execute and deliver to Escrow Holder a Quitclaim Deed which shall be recorded by Escrow Holder at Optionee’s expense.

Section 12.2 No Further Obligations. If Optionee elects to terminate this Agreement pursuant to Section 12.1, or if Optionee fails to timely exercise this Option in accordance with Section 5.1, except for those provisions of this Agreement which by their expressed terms survive the termination of this Agreement, no party hereto shall have any other or further rights or obligations under this Agreement.

#### 13.0 ARTICLE 13 – MISCELLANEOUS

Section 13.1 Headings. The titles and headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify or place any construction on any of the provisions of this Agreement.

Section 13.2 Time Of Essence. All times and dates in this Agreement are of the essence.

Section 13.3 Entire Agreement/Amendments. This Agreement, which includes the Exhibits, contains all representations and the entire understanding and agreement between the parties with respect to the Property and the Option herein granted. Correspondence, memoranda or agreements, whether written or oral, originating before the date of this Agreement, with respect to the Property and/or the Option, are expressly replaced by this Agreement, which may not be altered or modified except by a writing signed by Optionee and Optionor.

Section 13.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.



Section 13.5 No Merger. Except as otherwise provided herein, the obligations contained in this Agreement shall not merge with transfer of title, but shall survive the Close of Escrow for the period expressly provided for herein.

Section 13.6 Attorneys' Fees. In any dispute between the parties, whether or not resulting in litigation, the prevailing party shall be entitled to recover from the other party all reasonable costs, attorney's fees, and out-of-pocket disbursements and expenses incurred in connection therewith.

Section 13.7 Notices. Any notice given under this Agreement shall be in writing and shall be delivered either personally (including by means of professional messenger service) or by registered or certified U.S. mail, postage prepaid, return receipt requested. Notices may also be delivered by facsimile transmission, if the party to whom the notice is being sent has such a device in its office, provided a complete copy of any notice so transmitted shall also be mailed by regular United States mail no later than the following business day. Notices shall be deemed received upon the earlier of actual receipt or three (3) calendar days following Deposit in U.S. mail, postage prepaid. Notices shall be directed to the following addresses:

To Optionor:

Llagas Valley Investments, LLC  
P.O. Box 296  
Morgan Hill, CA 95038  
Attn: Gary Walton  
Fax: (408) 847-4164

To Optionee:

Morgan Hill Redevelopment Agency  
17555 Peak Avenue  
Morgan Hill, CA 95037  
Attn: Redevelopment Administrator  
Fax (408) 778-7869

To Tenant:

Depot Center, Inc.  
80 East Second Street  
Morgan Hill, CA 95037  
Attn: Bradley A. Jones  
Fax: (408) ~~778-8806~~

Either party may change its address for notice purposes by giving notice to the other and to the Escrow Holder in accordance with this Section 13.7, provided that the address change will not be effective until ten (10) calendar days after notice of the change.

Section 13.8 Gender And Number. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall include the others whenever the context so indicates.

Section 13.9 Authority. The individuals executing this Agreement represent and warrant that they are fully authorized to execute this Agreement on behalf of their respective entities.

Section 13.10 Default. In the event that either party fails to perform in a timely manner any material obligation under this Agreement, the other party shall give written notice thereof stating with specificity the nature of the default. If the allegedly defaulting party fails to cure such default within five (5) business days after receipt of such notice, or in the event of a default that is not capable of cure within such five (5) business day period, commences cure within said five (5) business day period and completes the same within thirty (30) days thereafter, the non-breaching party may declare the other to be in default under this Agreement (a "Default"). Except as otherwise provided in Section 8.2 with respect to Optionor's inability to remove or cure any disapproved Subsequent Title Exception, in the event of a Default by Optionor prior to Closing, Optionee shall have the right to elect either (a) to terminate this Agreement in which event Optionee shall recover from Optionor the principle sum of the Option Consideration, including the Note Extension Consideration, or (b) to obtain specific performance of Optionor's obligations pursuant to this Agreement. In the event of a Default by Optionee of this Agreement prior to the Closing, Optionor shall have the right to terminate this Agreement and to retain all Option Consideration including the Note Extension Consideration (the "Liquidated Damages"). The parties hereto acknowledge that it is impossible to estimate more precisely the damages which might be suffered by Optionor upon Optionee's Default, and that said Liquidated Damages are a reasonable estimate of Optionor's probable loss in the event of Defaults by Optionee. In no event shall Optionor or Optionee be liable to the other for direct, indirect or consequential damages on account of any Default under this Agreement.

Section 13.11 Cooperation. Each of the parties hereto agrees to reasonably cooperate with the others in undertaking any and all additional steps which may be necessary or convenient for the completion of the transactions contemplated by this Agreement, including, without limitation, the preparation and execution of such other and further instruments as may be necessary to evidence or facilitate the same.

Section 13.12 Severability. If any provision of the Agreement is deemed invalid, then the remaining provisions thereof will continue in full force and effect and will be construed as if the invalid portion had not been part of this Agreement.

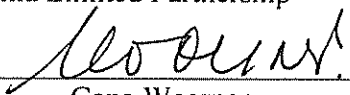
Section 13.13 Successor and Assigns. The covenants and conditions herein contained apply to and bind the heirs, successors, executors, administrators, and assigns of the parties hereto.

Section 13.14 Counterparts. This Agreement may be signed in counterpart or duplicate copies, and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

IN WITNESS WHEREOF, the parties have executed and delivered to each other copies of this Agreement effective as of the date first set forth.

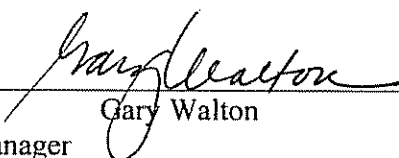
**OPTIONOR:**

LLAGAS VALLEY INVESTMENTS, LLC,  
a California Limited Partnership

By:   
Gene Woerner

Its: Manager

Date: May 12, 2010

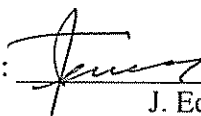
By:   
Gary Walton

Its: Manager

Date: May 12, 2010

**OPTIONEE:**

MORGAN HILL REDEVELOPMENT AGENCY,  
a public body, corporate and politic

By:   
J. Edward Tewes

Its: Executive Director

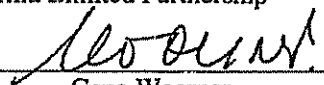
Date: May 24, 2010

APPROVED AS TO FORM  
Nossaman LLP  
Special Outside Counsel

By: \_\_\_\_\_  
F. Gale Connor

**OPTIONOR:**

LLAGAS VALLEY INVESTMENTS, LLC,  
a California Limited Partnership

By:   
Gene Woerner

Its: Manager

Date: May 12, 2010

By:   
Gary Walton

Its: Manager

Date: May 12, 2010

**OPTIONEE:**

MORGAN HILL REDEVELOPMENT AGENCY,  
a public body, corporate and politic

By: \_\_\_\_\_  
J. Edward Tewes

Its: Executive Director

Date: May \_\_\_\_, 2010

APPROVED AS TO FORM  
Nossaman LLP  
Special Outside Counsel

By:   
F. Gale Connor

Agency Action: May 19, 2010

ACKNOWLEDGED AND ACCEPTED

Depot Center Morgan Hill, LLC, identified herein as the 2007 Optionee, agrees to the termination of the Original Option on the terms and conditions of the Termination of Option Agreement executed concurrently herewith.

DEPOT CENTER MORGAN HILL, LLC, a California Limited Liability Company

By: \_\_\_\_\_

Paul Schuyler

Its: President

Date: May 12, 2010

**EXHIBIT A**  
[LEGAL DESCRIPTION OF PROPERTY]

**ORDER NO. : 0625006442-LC**

**EXHIBIT A**

The land referred to is situated in the County of Santa Clara, City of Morgan Hill, State of California, and is described as follows:

LOT 1, 2, 3, 4, 5, 6, 7, 8, and 15, BLOCK 18, as delineated upon that certain Map entitled "Morgan Hill Ranch Map No. 2", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on September 10th, 1892 in Book G of Maps, at Page 19.

APN: 726-14-001  
A727-10-40

**EXHIBIT B**  
**[MEMORANDUM OF OPTION]**

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MEMORANDUM OF OPTION**  
**APN 726-14-001**

This Memorandum of Option is effective upon recordation and is entered into by and between Llagas Valley Investments, a California Limited Liability Company, ("Optionor"), and The Morgan Hill Redevelopment Agency, a public body, corporate and politic, ("Optionee"), who agree as follows:

1. Optionor hereby grants to Optionee the option to purchase that certain parcel of real property commonly known as 95 East Third Street, Morgan Hill, CA APN 726-14-001 as more particularly described in Exhibit A attached hereto, pursuant to the terms and conditions of that certain Option Agreement (the "Option Agreement") entered into effective as of January \_\_\_\_, 2010 by Optionor and Optionee, which is hereby incorporated by reference herein.

2. Unless earlier terminated in accordance with the terms of the Option Agreement, if not previously exercised by Optionee, said option to purchase shall expire at Midnight, on April 30, 2016.

3. This Memorandum of Option is prepared for the purpose of imparting constructive notice of the Option Agreement and in no way modifies the provisions of the Option Agreement.

IN WITNESS WHEREOF, Optionor and Optionee have duly executed this Memorandum of Option on this \_\_\_\_ day of \_\_\_\_\_, 2010.



OPTIONOR:

LLAGAS VALLEY INVESTMENTS, LLC, a California Limited Partnership

By: \_\_\_\_\_

Gene Woerner

Its: Manager

Date: May \_\_\_\_, 2010

By: GARY WALTON

By: \_\_\_\_\_

Gary Walton

Its: Manager

Date: May \_\_\_\_, 2010

OPTIONEE:

MORGAN HILL REDEVELOPMENT AGENCY, a municipal corporation

By: \_\_\_\_\_

J. Edward Tewes

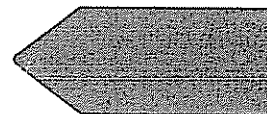
Its: Executive Director

## CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Memorandum of Option dated May \_\_\_\_, 2010 from Llagas Valley Investments, LLC to the Morgan Hill Redevelopment Agency, a public body, corporate and politic, is hereby accepted by order of the Board of Members by the undersigned officer or agent on behalf of the Board, pursuant to joint authority conferred by Resolution No. MHRA-315, of the Board Members of Morgan Hill Redevelopment Agency, adopted on May 19, 2010, and of the Optionee consents to recordation thereof by its duly authorized officer.

Dated: May \_\_\_\_, 2010

MORGAN HILL REDEVELOPMENT AGENCY



By: \_\_\_\_\_

J. Edward Tewes

Its: Executive Director

APPROVED AS TO FORM:

Nossaman LLP

Special Outside Counsel

By: F. Gale Connor

**ACKNOWLEDGMENT**

State of California )

County of \_\_\_\_\_ )

On \_\_\_\_\_, 2010, before me \_\_\_\_\_  
Here Insert Name and Title of the Officer  
 personally appeared, \_\_\_\_\_  
Names(s) of Signers  
 \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature: \_\_\_\_\_  
Signature of Notary Public

**EXHIBIT C**  
[DISCLOSURE DOCUMENTS]

**Property**

1. Historical Third-Party Reports
  - A. Property Condition Assessment
  - B. Environmental Reports
  - C. Seismic/Structural Assessments
  - D. Mold Assessments
  - E. Zoning Report
  - F. ADA Surveys
  - G. Operation and Maintenance Programs
2. Certificate of Occupancy (Building & Tenants)
3. Licenses, Permits & Contracts, Including Service Contracts
4. Plans (Site Plan, Floor Plans, As-Builts)
5. Tenant Estoppel Certificates Executed by Each Tenant or Subtenant at the Option Property
6. Warranties (Roof and Any Serviceable Warranties)
7. Litigation (Any Documentation Regarding Current, Pending or Threatened Litigation)

**Income**

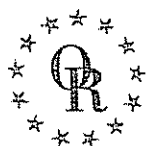
1. Rent Roll (Current and Updated From Time-To-Time)
2. Security Deposits/Credits Schedule
3. General Ledger
4. Tenant Leases (Including Amendments and Exhibits)
5. Tenant Contact Information
6. Percentage Rent/Tenant Sales (Prior Three Years and YTD, if Applicable)

**Expenses**

1. Capital Expenses (Prior Three Years)

2. Tenant Improvements (Prior Three Years)
3. CAM Reconciliation with Tenant Detail (Prior Three Years)
4. Utility Bills

**EXHIBIT D**  
[PRELIMINARY TITLE REPORT]



**OLD REPUBLIC**  
TITLE COMPANY

17485 Monterey Street, Ste. 101  
Morgan Hill, CA 95037  
(408) 779-2166 Fax: (408) 779-0695

### PRELIMINARY REPORT

Issued for the sole use of:

CITY OF MORGAN HILL  
17575 PEAK AVENUE  
MORGAN HILL, CA 95037

Our Order Number 0625006442-LC

When Replying Please Contact:

Linda Conley  
(408) 779-2166

Property Address:

95 East 3rd Street, Morgan Hill, CA 95037

In response to the above referenced application for a policy of title insurance, OLD REPUBLIC TITLE COMPANY hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said Policy or Policies are set forth in Exhibit A attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the Homeowner's Policy of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit A. Copies of the Policy forms should be read. They are available from the office which issued this report.

**Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered. It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.**

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of July 23, 2009, at 7:30 AM

**OLD REPUBLIC TITLE COMPANY**  
For Exceptions Shown or Referred to, See Attached

Page 1 of 5 Pages

OLD REPUBLIC TITLE COMPANY  
ORDER NO. 0625006442-LC

The form of policy of title insurance contemplated by this report is:

CLTA Standard Coverage Policy - 1990. A specific request should be made if another form or additional coverage is desired.

The estate or interest in the land hereinafter described or referred or covered by this Report is:

Fee

Title to said estate or interest at the date hereof is vested in:

Llagas Valley Investments, a California limited liability company

The land referred to in this Report is situated in the County of Santa Clara, City of Morgan Hill, State of California, and is described as follows:

LOT 1, 2, 3, 4, 5, 6, 7, 8, and 15, BLOCK 18, as delineated upon that certain Map entitled "Morgan Hill Ranch Map No. 2", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on September 10th, 1892 in Book G of Maps, at Page 19.

APN: 726-14-001  
A727-10-40

At the date hereof exceptions to coverage in addition to the Exceptions and Exclusions in said policy form would be as follows:

1. Taxes and assessments, general and special, for the fiscal year 2009 - 2010, a lien, but not yet due or payable.
2. Taxes and assessments, general and special, for the fiscal year 2008 - 2009, as follows:
 

Assessor's Parcel No	:	726-14-001	
Code No.	:	04-001	
1st Installment	:	\$8,960.58	Marked Paid
2nd Installment	:	\$8,960.58	Marked Paid
Land Value	:	\$571,350.00	
Imp. Value	:	\$781,356.00	
3. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.



OLD REPUBLIC TITLE COMPANY  
ORDER NO. 0625006442-LC

4. Any special tax which is now a lien and that may be levied within the Santa Clara County Library District, notice(s) for which having been recorded.

NOTE: Among other things, there are provisions in said notice(s) for a special tax to be levied annually, the amounts of which are to be added to and collected with the property taxes.

NOTE: The current annual amount levied against this land is \$69.00.

NOTE: Further information on said assessment or special tax can be obtained by contacting:

Name : Fiscal Agent of the Santa Clara County Library District, Joint Powers Authority  
Address : 14600 Winchester Blvd., Los Gatos, CA 95032  
Telephone No. : (408) 293-2326, Ext. 3004

5. Agreement for Facade Easement

Executed by : Llagas Valley Investments, LLC  
and Between : Morgan Hill Redevelopment Agency, a public body, corporation and politic On the terms, covenants and conditions contained therein,  
  
Recorded : December 30th, 2002 in Official Records, under Recorder's Serial Number 16714909  
Return to Address : Morgan Hill Redevelopment Agency 17555 Peak Avenue, Morgan Hill, California 95037.

6. Deed of Trust to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof,

Amount : \$850,000.00  
Trustor/Borrower : LLAGAS VALLEY INVESTMENTS, a California Limited Liability Company  
Trustee : PCB Service Corporation  
Beneficiary/Lender : South Valley National Bank  
Dated : July 8, 2004  
Recorded : July 15, 2004 in Official Records under Recorder's Serial Number 17897794  
Returned to : C/L Loan Services, P.O. Box 60654, Santa Barbara, CA 93160-0654.

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7. Memorandum of Option  
 Optioner: LLAGAS VALLEY INVESTMENTS, a California Limited Liability Company  
 Optionee: Deport Center, Inc. , a California Corporation  
 Recorded: April 28, 2006 as Instrument No. 18908076 of Official Records
8. Any unrecorded and subsisting leases.
9. Prior to the issuance of any policy of title insurance, the Company will require the following with respect to LLAGAS VALLEY INVESTMENTS, a California Limited Liability Company:
  1. A copy of any management or operating agreements and any amendments thereto, together with a current list of all members of said LLC.
  2. A certified copy of its Articles of Organization (LLC-1), any Certificate of Correction (LLC-11), Certificate of Amendment (LLC-2), or Restatement of Articles of Organization (LLC-10).
  3. Recording a Certified copy of said LLC-1 and any "amendments thereto".
10. The requirement that this Company be provided with a suitable Owner's Affidavit (form ORT 174). The Company reserves the right to make additional exceptions and/or requirements upon review of the Owner's Affidavit.
11. The requirement that this Company be provided with an opportunity to inspect the land (the Company reserves the right to make additional exceptions and/or requirements upon completion of its inspection).
12. Rights and claims of parties in possession.

----- **Informational Notes** -----

- A. The applicable rate(s) for the policy(s) being offered by this report or commitment appears to be section(s) 1.1.

OLD REPUBLIC TITLE COMPANY  
ORDER NO. 0625006442-LC

- B. The above numbered report (including any supplements or amendments thereto) is hereby modified and/or supplemented to reflect the following additional items relating to the issuance of an American Land Title Association loan form policy:

NONE

NOTE: Our investigation has been completed and there is located on said land a commercial building known as 95 East 3rd Street, Morgan Hill, CA 95037.

The ALTA loan policy, when issued, will contain the CLTA 100 Endorsement and 116 series Endorsement.

Unless shown elsewhere in the body of this report, there appear of record no transfers or agreements to transfer the land described herein within the last three years prior to the date hereof, except as follows:

NONE

- C. NOTE: The last recorded transfer or agreement to transfer the land described herein is as follows:

Instrument	:	
Entitled	:	Deed
By/From	:	Joseph Squeri and Jane R. Squeri, Trustees of the Joseph and Jane Squeri Revocable Trust dated January 31, 1996 and Robert Squeri, Trustee of the Squeri Revocable Trust dated January 26, 1996, all dealing with their entire interest
To	:	Llagas Valley Investments, a California limited liability company
Recorded	:	March 12, 1998 in Official Records under Recorder's Serial Number 14091598

O.N.  
RM/eb

Exhibit A

**CALIFORNIA LAND TITLE ASSOCIATION  
STANDARD COVERAGE POLICY - 1990  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.-  
  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;-
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments Which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.  
  
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims Which are not shown by the public records but which could be ascertained by an inspection of the land which may be asserted by persons in possession thereof,
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

**OLD REPUBLIC TITLE COMPANY****Privacy Policy Notice****PURPOSE OF THIS NOTICE**

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about you with a nonaffiliated third party unless the institution provides you with a notice of its privacy policies and practices, such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed. In compliance with the GLBA, we are providing you with this document, which notifies you of the privacy policies and practices of OLD REPUBLIC TITLE COMPANY

We may collect nonpublic personal information about you from the following sources:

- Information we receive from you such as on applications or other forms.
- Information about your transactions we secure from our files, or from [our affiliates or] others.
- Information we receive from a consumer reporting agency.
- Information that we receive from others involved in your transaction, such as the real estate agent or lender.

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional nonpublic personal information will be collected about you.

We may disclose any of the above information that we collect about our customers or former customers to our affiliates or to nonaffiliated third parties as permitted by law.

We also may disclose this information about our customers or former customers to the following types of nonaffiliated companies that perform marketing services on our behalf or with whom we have joint marketing agreements:

- Financial service providers such as companies engaged in banking, consumer finance, securities and insurance.
- Non-financial companies such as envelope stuffers and other fulfillment service providers.

**WE DO NOT DISCLOSE ANY NONPUBLIC PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT SPECIFICALLY PERMITTED BY LAW.**

We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

ORT 287-C      5/07/01



**ORDER NO. : 0625006442-LC**

**EXHIBIT A**

The land referred to is situated in the County of Santa Clara, City of Morgan Hill, State of California, and is described as follows:

LOT 1, 2, 3, 4, 5, 6, 7, 8, and 15, BLOCK 18, as delineated upon that certain Map entitled "Morgan Hill Ranch Map No. 2", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on September 10th, 1892 in Book G of Maps, at Page 19.

APN: 726-14-001  
A727-10-40

### OPTION TERMINATION AGREEMENT

This OPTION TERMINATION AGREEMENT ("Agreement") is made this \_\_\_\_ day of may, 2010 (the "Effective Date") by and among LLAGAS VALLEY INVESTMENTS, LLC, a California Limited Liability Company ("Optionor"), and DEPOT CENTER MORGAN HILL, LLC, a California Limited Liability Company and the MORGAN HILL REDEVELOPMENT AGENCY, a public body corporate and politic (the "Agency") with reference to the following.

### RECITALS

A. WHEREAS Optionor is the owner of certain real property situated in the City of Morgan Hill, County of Santa Clara, California, commonly known as 95 East Third Street, APN 726-14-001 (the "Property"); and

B. WHEREAS, on August 31, 2007, Owner and Depot Center Morgan Hill LLC, as optionee (the "2007 Optionee"), entered into that certain option agreement for the purchase of the Property a copy of which is attached hereto as Exhibit A (the "2007 Option Agreement"); and

C. WHEREAS, Optionor wishes to terminate the 2007 Option Agreement and grant a new Option to purchase the Property to the Agency ; and

D. WHEREAS, for the consideration set forth herein, the 2007 Optionee agrees to a termination of the 2007 Option Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### AGREEMENT

1. Recitals The foregoing recitals are true and correct and by this reference are incorporated herein.

2. Termination of 2007 Option Subject to the terms and conditions of this Agreement, the 2007 Option Agreement, a copy of which is attached hereto as Exhibit A, shall be terminated as of the Commencement Date of the Option Agreement between Owner and Agency (the "2010 Option Agreement") of even date herewith (the "Option Termination Date"). Except for the rights and obligations arising under this Agreement, as of the Option Termination Date the rights and obligations of Optionor and 2007 Optionee under the 2007 Option Agreement will terminate and Optionor and 2007 Optionee shall be released and discharged from further obligations under the 2007 Option Agreement.

3. Option Termination Payment As consideration for termination of the 2007 Option Agreement, the Agency shall, not less than one (1) business day before the



Option Termination Date, deposit with Old Republic Title Company, 17485 Monterey Street, Suite 101, Morgan Hill, CA 95037 (the "Escrow Holder"), (the "Escrow") the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) in good same day funds (the "Option Termination Payment"). Upon receipt of confirmation from the parties to the 2010 Option Agreement that the Option Payment due thereunder may be released to Optionor and the Memorandum of Option may be recorded, Escrow Holder shall release the Option Termination Payment to 2007 Optionee, subject only to adjustments and prorations as provided for herein below. Notwithstanding any other provisions of this Agreement, the 2010 Option Agreement shall not be effective, and the 2007 Option Agreement shall not be terminated, unless and until the 2007 Optionee receives the Option Termination Payment in cash or immediately available funds.

4. 2007 Option Consideration All consideration paid by or credited to 2007 Optionee under the 2007 Option Agreement (the "2007 Option Consideration") shall be retained by Optionor. The parties this Agreement acknowledge that none of the 2007 Option Consideration shall be credited against the Purchase Price payable by the Agency under the 2010 Option Agreement.

5. Further Assurances Each party hereto agrees to cooperate with the other to execute and deliver all further instruments and documents and do all further acts and things as such party may be reasonably requested to do from time to time by any other party or Escrow Holder, for purposes of carrying out the provisions and objectives of the Agreement, including, but not limited to, execution of any quit claim deed by 2007 Optionee as may be necessary to remove the cloud of the 2007 Option from title to the Property.

6. Repayment of Agency Loan All amounts due and owing under that certain Loan Agreement between the Agency and Bradley A. Jones and Cinda L. Meister, dated October 31, 2006, and that certain Promissory Note secured by Deed of Trust between the same parties dated October 31, 2006, as said instruments have been amended, shall be repaid to the Agency from the funds available to 2007 Optionee from the Option Termination Payment. As of the Effective Date of the Agreement the amount due under said Agency Loan is approximately \$63,300. Said re-payment amount shall be treated as a credit in the Escrow against amounts to be deposited by the Agency for purposes of consummating this transaction.

7. Escrow Fees Except in the event of a breach of this Agreement by Optionor or 2007 Optionee, all Escrow fees and Escrow Holder's customary charges and other closing costs shall be paid by the Agency. The foregoing notwithstanding, if the Escrow fails to close as a result of a breach of this Agreement by any party hereto, the breaching party shall be obligated to pay all of Escrow Holder's fees and charges.

8. Time of Essence All times and dates of this Agreement are of the essence.

9. Entire Agreement/Amendments This Agreement, which includes the Exhibits, contains all representations and the entire understanding and agreement

between the parties with respect to termination of the 2007 Option Agreement and the matters stated herein. Correspondence, memoranda or agreements, whether written or oral, originating before the date of this Agreement, with respect to termination of the 2007 Option Agreement, are expressly replaced by this Agreement which may not be altered or modified except by writing signed by all parties hereto.

10. Governing Law This Agreement shall be governed by construed and in accordance with the laws of the State of California.

11. Attorney's Fees In the event of a dispute between the parties, whether or not resulting in litigation, the prevailing party shall be entitled to recover from the other party all reasonable costs, attorney's fees and out of pocket disbursements and expenses incurred in connection therewith.

12. Authority The individuals executing this Agreement represent and warrant that they are fully authorized to execute this Agreement on behalf of their respective entities.

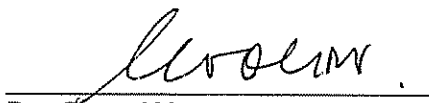
13. Severability If any provision of this Agreement is deemed invalid, then the remaining provision thereof will continue in full force and effect and will be construed as if the invalid provision had not been part of this Agreement.

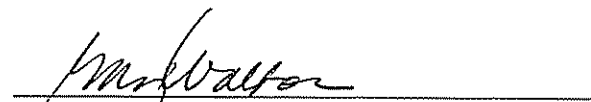
14. Counterparts This Agreement may be executed in counterparts or duplicate copies and any signed counterpart or duplicate copy shall be equivalent to a signed original of all purposes.

IN WITNESS WHEREOF, the parties have executed and delivered to each other copies of this Agreement effective as of the date first set forth above.

OPTIONOR

LLAGAS VALLEY INVESTMENTS, LLC  
a California Limited Partnership

  
By: Gene Woerner  
Its: Manager

  
By: Gary Walton  
Its: Manager

2007 OPTIONEE

DEPOT CENTER MORGAN HILL, LLC  
a California Limited Liability Company



By: Paul Schuyler  
Its: President

MORGAN HILL REDEVELOPMENT AGENCY,  
a public body, corporate body politic



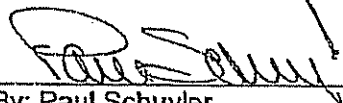
\_\_\_\_\_  
By: J. Edward Tewes  
Its: Executive Director

APPROVED AS TO FORM  
Nossaman LLP  
Special Outside Counsel of Morgan Hill Redevelopment Agency

\_\_\_\_\_  
By: F. Gale Connor

2007 OPTIONEE

DEPOT CENTER MORGAN HILL, LLC  
a California Limited Liability Company



By: Paul Schuyler  
Its: President

MORGAN HILL REDEVELOPMENT AGENCY,  
a public body, corporate body politic

\_\_\_\_\_  
By: J. Edward Tewes  
Its: Executive Director

APPROVED AS TO FORM  
Nossaman LLP  
Special Outside Counsel of Morgan Hill Redevelopment Agency



By: F. Gale Connor

**EXHIBIT A  
2007 OPTION AGREEMENT**

## OPTION AGREEMENT

This Option Agreement ("Agreement") is made as of August 31, 2007 between Llagas Valley Investments, LLC, a California limited liability company ("Optionor") and Depot Center Morgan Hill, LLC, a California limited liability company ("Optionee").

### Recitals

A. Whereas, Optionor is the owner of certain real property situated in the City of Morgan Hill, County of Santa Clara, California, commonly known as 95 East Third Street, and more particularly described in attached Exhibit A, incorporated by reference ("Property"); and

B. Whereas, on May 1, 2006, Optionor and Depot Center, Inc., a California corporation, as Optionee (Former Optionee), entered into that certain lease agreement ("Lease") and an Option Agreement (Former Option Agreement), regarding the Property; and

C. Whereas, Optionor wishes to revoke the Former Option Agreement and grant a new option to purchase the Property to Depot Center Morgan Hill, LLC, as Optionee; and

D. Whereas, Optionee desires to acquire the exclusive right to purchase the Property at an agreed price and under the specific terms in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

### Section 1. Option to Purchase

Optionor grants to Optionee an option to purchase the Property on the terms and conditions of this Agreement and in the Real Estate Purchase and Sale Agreement attached as Exhibit B and incorporated by reference ("Purchase Agreement").

### Section 2. Consideration for Option

Concurrently with the execution of this Agreement, Optionee has paid to Optionor as consideration the sum of One Hundred Thousand Dollars (\$100,000.00) for the option. If Optionee timely exercises this option in accordance with the terms and conditions of this Agreement, is not in default of the Lease and actually closes the conveyance of the Property, Optionor shall credit One Hundred Thousand Dollars (\$100,000.00) of the option consideration to the purchase price of the Property.

### Section 3. Purchase Price

The total purchase price for the Property pursuant to this Agreement is Two Million Two Hundred Thousand Dollars (\$2,200,000.00). If Optionee timely exercises this option, is not in default of the Lease and actually closes the conveyance of the Property, Optionee shall be credited, at closing, the sum from each monthly lease payment that represents Optionee's share of the principal reduction on the South Valley National Bank First Deed of Trust dated as of July 8, 2004 and recorded under serial number 17897794 in the official records of the Santa Clara County recorder, recorded on July 15, 2004, less any applicable prepayment penalties due on the loan. Optionee shall also be credited the option consideration, as set forth in Section 2. The balance of the purchase price shall be payable to Optionor in cash at the close of escrow. As of August 1, 2007, the principal reduction credit to which Optionee is entitled is approximately \$18,567.63.00. Optionee's principal reduction credit is comprised of the entire principal amount paid on the loan from May 1, 2006 until the close of escrow.

### Section 4. Term

This Agreement shall be effective as of the date of this Agreement and shall expire at 5:00 p.m. (Pacific Time) on April 30, 2014 ("Option Term").

### Section 5. Exercise

Provided Optionee is not in default under this Agreement, this option may be exercised by Optionee's delivering to Optionor before the expiration of the Option Term written notice of the exercise ("Exercise Notice"), which shall state that the option is exercised without condition or qualification. The Exercise Notice must be accompanied by two (2) copies of the Purchase Agreement executed by Optionee, with the first paragraph of the Purchase Agreement completed by insertion of the date on which the Exercise Notice is given. Additionally, if Optionee exercises this Option during years 1-7 of this Agreement, Optionee shall pay to Optionor a seven percent (7%) prepayment penalty calculated as the difference between the principal balance on the First Deed of Trust and the Purchase Price, multiplied by seven percent (7%).

### Section 6. Execution of Purchase Agreement

On receipt by Optionor of the Exercise Notice and two (2) copies of the Purchase Agreement executed by Optionee, Optionor shall promptly execute the Purchase Agreement and deliver an executed copy to Optionee. Optionor's failure to execute and deliver a copy of the Purchase Agreement in accordance with this Section shall not affect the validity of the Purchase Agreement. The Purchase Agreement shall be immediately effective and binding on both Optionor and Optionee without further execution by the parties, on exercise of the option in accordance with Section 5 hereof.

### Section 7. Representations and Warranties

Optionor warrants that Optionor is the owner of the Property and has marketable and insurable fee simple title to the Property clear of restrictions, leases, liens, and other encumbrances, except as permitted in the Purchase Agreement. If this option is exercised by Optionee, Optionor will convey title to the Property by grant deed. During the Option Term and until the Property is conveyed to Optionee, if this option is exercised, Optionor will not encumber the Property in any way nor grant any property or contract right relating to the Property without the prior written consent of Optionee.

### Section 8. Time of Essence

Time is of the essence for this Option Agreement. If the option is not exercised in the manner provided in Section 5 hereof before the expiration of the Option Term, Optionee shall have no interest in the Property and the option may not be revived by any subsequent payment or further action by Optionee.

### Section 9. Quitclaim Deed

If this Agreement is terminated, Optionee agrees, if requested by Optionor, to execute, acknowledge, and deliver a quitclaim deed to Optionor within ten (10) days after termination and to execute, acknowledge, and deliver any other documents required by any title company to remove the cloud of this option from the Property.

### Section 10. Notices

All notices, demands, requests, exercises, and other communications under this Agreement by either party shall be in writing and:

(a) sent by United States Certified Mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States mail, or

(b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or



(c) sent by telecopy or similar means if a copy of the notice is also sent by United States Certified Mail; in which case notice shall be deemed delivered on transmittal by telecopier or other similar means, provided that a transmission report is generated that reflects the accurate transmission of the notices, as follows:

Depot Center Morgan Hill, LLC  
17415 Monterey Street, Suite A  
Morgan Hill, California 95037

Llagas Valley Investments, LLC P.O.  
Box 296  
Morgan Hill, California 95038

These addresses may be changed by written notice to the other party, provided that no notice of a change of address shall be effective until actual receipt of that notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

### Section 11. Transfer

Optionee may not assign or transfer this Agreement and the rights under it without Optionor's prior written consent, which shall not be unreasonably withheld.

### Section 12. Litigation Costs

If any legal action or any other proceeding, including arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs, in addition to any other relief to which the party may be entitled.

"Prevailing party" shall include without limitation:

- (a) a party who dismisses an action in exchange for sums allegedly due;
- (b) the party who receives performance from the other party of an alleged breach of covenant or a desired remedy where that is substantially equal to the relief sought in an action; or
- (c) the party determined to be the prevailing party by a court of law.

### **Section 13. Memorandum of Option**

Immediately following the execution of this Agreement by Optionor, the Memorandum of Option Agreement attached to this Agreement as Exhibit C shall be recorded by Optionor with the official records of County of Santa Clara, California.

### **Section 14. Survival**

The terms of this Agreement shall survive the close of escrow of the Property unless there is a contradiction between the Real Estate Purchase and Sale Agreement and this Agreement, in which event the Real Estate Purchase and Sale Agreement shall control.

### **Section 15. Successors**

This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assignees of the parties to this Agreement.

### **Section 16. Waivers**

No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party.

### **Section 17. Construction**

Section headings are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement.

### **Section 18. Further Assurances**

Whenever requested by the other party, each party shall execute, acknowledge, and deliver all further conveyances, agreements, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents, and all further instruments and documents as may be necessary, expedient, or proper to complete any conveyances, transfers, sales, and agreements covered by this Agreement, and to do all other acts and to execute, acknowledge, and deliver all requested documents to carry out the intent and purpose of this Agreement.

### **Section 19. Third-Party Rights**

Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

### **Section 20. Integration**

This Agreement contains the entire agreement between the parties, and expressly supersedes all previous or contemporaneous agreements, understandings, representations, or statements between the parties respecting the option for the Property.

### **Section 21. Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

### **Section 22. Amendment**

This Agreement may not be amended or altered except by a written instrument executed by Optionor and Optionee.

**Section 23. Partial Invalidity**

Any provision of this Agreement that is unenforceable or invalid or the inclusion of which would adversely affect the validity, legality, or enforceability of this Agreement shall be of no effect, but all the remaining provisions of this Agreement shall remain in full force.

**Section 24. Exhibits**

All attached exhibits are incorporated in this Agreement by this reference.

**Section 25. Authority of Parties**

All persons executing this Agreement on behalf of any party to this Agreement warrant that they have the authority to execute this Agreement on behalf of that party.

**Section 26. Governing Law**

The validity, meaning, and effect of this Agreement shall be determined in accordance with California laws.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

OPTIONOR:

LLAGAS VALLEY INVESTMENTS, LLC,

By: *[Signature]*

Its: *MANAGER*

By: *[Signature]*

Its: *MANAGER*

OPTIONEE:

DEPOT CENTER MORGAN HILL, LLC

By: *[Signature]*

Its: *MANAGER*

By: *[Signature]*

Its: *PARTNER*

EXHIBIT A

**Legal Description**

All that certain real property situated in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

All of Lots 1,2,3,4,5,6,7,8 and 15 in Block 18, as shown upon that certain Map entitled, "Morgan Hill Ranch Map No. 2", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on September 10, 1892 in Book G of Maps, page 19.

EXHIBIT B

Purchase and Sale Agreement

EXHIBIT C

Memorandum of Option



## OPTION AGREEMENT

This Option Agreement ("Agreement") is made as of May 1, 2006 between Llagas Valley Investments, LLC, a California limited liability company ("Optionor") and Depot Center, Inc., a California corporation ("Optionee").

### Recitals

A. Optionor is the owner of certain real property situated in the City of Morgan Hill, County of Santa Clara, California, commonly known as 95 East Third Street, and more particularly described in attached Exhibit A, incorporated by reference ("Property").

B. On May 1, 2006, Optionor and Optionee entered into that certain lease agreement ("Lease") regarding the Property.

C. Optionee desires to acquire the exclusive right to purchase the Property at an agreed price and under the specific terms in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

### Section 1. Option to Purchase

Optionor grants to Optionee an option to purchase the Property on the terms and conditions of this Agreement and in the Real Estate Purchase and Sale Agreement attached as Exhibit B and incorporated by reference ("Purchase Agreement").

### Section 2. Consideration for Option

Concurrently with the execution of this Agreement, Optionee has paid to Optionor as consideration the sum of Ten Thousand Dollars (\$10,000.00) for the option. This consideration shall be fully refundable to Optionee upon written request to Optionor, provided Optionor receives Optionee's request within Forty Five (45) days after execution of this Agreement. If a valid refund request is not received within that time, the consideration shall become nonrefundable. Within Sixty (60) days after execution of this Agreement, Optionee must pay Optionor an additional nonrefundable Ninety Thousand Dollars (\$90,000.00) to hold the option open during the remaining term of this Agreement. If Optionee timely exercises this option in accordance with the terms and conditions of this Agreement, is not in default of the Lease and actually closes the conveyance of the Property, Optionor shall credit One Hundred Thousand Dollars (\$100,000.00) of the option consideration to the purchase price of the Property.

### Section 3. Purchase Price

The total purchase price for the Property pursuant to this Agreement is Two Million Two Hundred Thousand Dollars (\$2,200,000.00). If Optionee timely exercises this option, is not in default of the Lease and actually closes the conveyance of the Property, Optionee shall be credited, at closing, the sum from each monthly lease payment that represents Optionee's share of the principal reduction on the South Valley National Bank First Deed of Trust dated as of July 8, 2004 and recorded under serial number 17897794 in the official records of the Santa Clara County recorder, recorded on July 15, 2004, less any applicable prepayment penalties due on the loan. Optionee shall also be credited the option consideration, as set forth in Section 2. The balance of the purchase price shall be payable to Optionor in cash at the close of escrow.

### Section 4. Term

This Agreement shall be effective as of the date of this Agreement and shall expire at 5:00 p.m. (Pacific Time) on April 30, 2014 ("Option Term").

### Section 5. Exercise

Provided Optionee is not in default under this Agreement, this option may be exercised by Optionee's delivering to Optionor before the expiration of the Option Term written notice of the exercise ("Exercise Notice"), which shall state that the option is exercised without condition or qualification. The Exercise Notice must be accompanied by two (2) copies of the Purchase Agreement executed by Optionee, with the first paragraph of the Purchase Agreement completed by insertion of the date on which the Exercise Notice is given. Additionally, if Optionee exercises this Option during years 1-7 of this Agreement, Optionee shall pay to Optionor a seven percent (7%) prepayment penalty calculated as the difference between the principal balance on the First Deed of Trust and the Purchase Price.

### Section 6. Execution of Purchase Agreement

On receipt by Optionor of the Exercise Notice and two (2) copies of the Purchase Agreement executed by Optionee, Optionor shall promptly execute the Purchase Agreement and deliver an executed copy to Optionee. Optionor's failure to execute and deliver a copy of the Purchase Agreement in accordance with this Section shall not affect the validity of the Purchase Agreement. The Purchase Agreement shall be immediately effective and binding on both Optionor and Optionee without further execution by the parties, on exercise of the option in accordance with Section 5 hereof.

### Section 7. Representations and Warranties

Optionor warrants that Optionor is the owner of the Property and has marketable and insurable fee simple title to the Property clear of restrictions, leases, liens, and other encumbrances, except as permitted in the Purchase Agreement. If this option is exercised by Optionee, Optionor will convey title to the Property by grant deed. During the Option Term and until the Property is conveyed to Optionee, if this option is exercised, Optionor will not encumber the Property in any way nor grant any property or contract right relating to the Property without the prior written consent of Optionee.

### Section 8. Time of Essence

Time is of the essence for this Option Agreement. If the option is not exercised in the manner provided in Section 5 hereof before the expiration of the Option Term, Optionee shall have no interest in the Property and the option may not be revived by any subsequent payment or further action by Optionee.

### Section 9. Quitclaim Deed

If this Agreement is terminated, Optionee agrees, if requested by Optionor, to execute, acknowledge, and deliver a quitclaim deed to Optionor within ten (10) days after termination and to execute, acknowledge, and deliver any other documents required by any title company to remove the cloud of this option from the Property.

### Section 10. Notices

All notices, demands, requests, exercises, and other communications under this Agreement by either party shall be in writing and:

(a) sent by United States Certified Mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States mail, or

(b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or

(c) sent by telecopy or similar means if a copy of the notice is also sent by United States Certified Mail; in which case notice shall be deemed delivered on transmittal by telecopier or other similar means, provided that a transmission report is generated that reflects the accurate transmission of the notices, as follows:

Depot Center, Inc.  
17415 Monterey Street, Suite A.  
Morgan Hill, California 95037

Llagas Valley Investments, LLC P.O.  
Box 296  
Morgan Hill, California 95038

These addresses may be changed by written notice to the other party, provided that no notice of a change of address shall be effective until actual receipt of that notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

#### Section 11. Transfer

Optionee may not assign or transfer this Agreement and the rights under it without Optionor's prior written consent, which shall not be unreasonably withheld.

#### Section 12. Litigation Costs

If any legal action or any other proceeding, including arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs, in addition to any other relief to which the party may be entitled.

"Prevailing party" shall include without limitation:

- (a) a party who dismisses an action in exchange for sums allegedly due;
- (b) the party who receives performance from the other party of an alleged breach of covenant or a desired remedy where that is substantially equal to the relief sought in an action; or
- (c) the party determined to be the prevailing party by a court of law.

### **Section 13. Memorandum of Option**

Immediately following the execution of this Agreement by Optionor, the Memorandum of Option Agreement attached to this Agreement as Exhibit C shall be recorded by Optionor with the official records of County of Santa Clara, California.

### **Section 14. Survival**

The terms of this Agreement shall survive the close of escrow of the Property unless there is a contradiction between the Real Estate Purchase and Sale Agreement and this Agreement, in which event the Real Estate Purchase and Sale Agreement shall control.

### **Section 15. Successors**

This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assignees of the parties to this Agreement.

### **Section 16. Waivers**

No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party.

### **Section 17. Construction**

Section headings are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement.

### Section 18. Further Assurances

Whenever requested by the other party, each party shall execute, acknowledge, and deliver all further conveyances, agreements, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents, and all further instruments and documents as may be necessary, expedient, or proper to complete any conveyances, transfers, sales, and agreements covered by this Agreement, and to do all other acts and to execute, acknowledge, and deliver all requested documents to carry out the intent and purpose of this Agreement.

### Section 19. Third-Party Rights

Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

### Section 20. Integration

This Agreement contains the entire agreement between the parties, and expressly supersedes all previous or contemporaneous agreements, understandings, representations, or statements between the parties respecting the option for the Property.

### Section 21. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

### Section 22. Amendment

This Agreement may not be amended or altered except by a written instrument executed by Optionor and Optionee.

### **Section 23. Partial Invalidity**

Any provision of this Agreement that is unenforceable or invalid or the inclusion of which would adversely affect the validity, legality, or enforceability of this Agreement shall be of no effect, but all the remaining provisions of this Agreement shall remain in full force.

### **Section 24. Exhibits**

All attached exhibits are incorporated in this Agreement by this reference.

### **Section 25. Authority of Parties**

All persons executing this Agreement on behalf of any party to this Agreement warrant that they have the authority to execute this Agreement on behalf of that party.

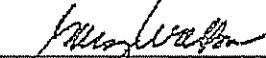
### **Section 26. Governing Law**

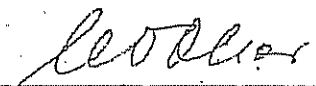
The validity, meaning, and effect of this Agreement shall be determined in accordance with California laws.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

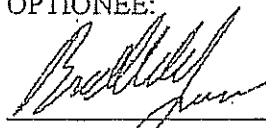
OPTIONOR:

LLAGAS VALLEY INVESTMENTS, LLC,

By:   
Its: manager

By:   
Its: manager

OPTIONEE:

  
BRADLEY A. JONES

  
CINDA L. MEISTER



EXHIBIT A

All that certain real property situated in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

All of Lots 1, 2, 3, 4, 5, 6, 7, 8 and 15 in Block 18, as shown upon that certain Map entitled, "Morgan Hill Ranch Map No. 2", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on September 10, 1892 in Book G of Maps, page 19.

### FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this "Amendment") is made and entered into as of this \_\_\_\_\_ day of May, 2010 (the "Effective Date") between LLAGAS VALLEY INVESTMENTS, LLC, a California Limited Liability Co. ("Landlord") and DEPOT CENTER, INC., a California Corporation ("Tenant").

### RECITALS

A. Landlord and Tenant are parties to that certain Lease dated as of May 1, 2006 (the "Lease"), for certain premises ( the "Premises") located at 95 East Third Street, City of Morgan Hill, County of Santa Clara, as more particularly described in the Lease.

B. Pursuant to an Addendum To Lease, the terms and conditions of an Option Agreement dated 5/1/06 between Landlord as Optionor and Tenant as Optionee for the purchase of that certain real property, known as 95 East Third Street, APN 726-14-001 (the "Property") were incorporated by reference and made a part of the Lease (the "2006 Option Agreement").

C. The 2006 Option Agreement was superseded by that certain Option Agreement for the purchase of the Property dated August 31, 2007 between Landlord/Optionor and Depot Center Morgan Hill LLC a Tenant-related entity, as Optionee. (the "2007 Option Agreement")

D. In a series of interrelated transactions, Landlord/Optioner and Depot Center Morgan Hill LLC (the "2007 Optionee") and the Morgan Hill Redevelopment Agency (the "Agency") have entered into that certain Option Termination Agreement, of even date herewith, terminating the 2007 Option Agreement effective as of the Commencement Date of that certain Option Agreement between Landlord/Owner and the Agency (the "2010 Option Agreement") also of even date herewith.

E. The term of the Lease runs concurrently with the term of the 2007 Option Agreement, both of which expire on April 30, 2014 (the "Termination Date"), however the term of the 2010 Option Agreement does not expire until April 30, 2016. It is therefore the desire of Landlord and Tenant to extend the Term of the Lease and to otherwise amend the Lease, all as set forth herein below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. Unless otherwise specifically set forth herein, all Terms used herein shall have the same meanings as set forth in the Lease.

2. Extension of Term. The Term of the Lease is hereby extended for a period of twenty four (24) months so that the expiration date of the Lease shall be April 30, 2016, unless earlier terminated pursuant to the terms and conditions set forth

below (the "Terminate Date"). The foregoing notwithstanding, the Term may be terminate by Landlord in connection with the exercise of the 2010 Option by the Agency or its assignee, upon not less than one hundred and eighty (180) days prior written notice by Landlord or its successor in interest given in accordance with Section 30 of the Lease.

3. Waiver of Relocation Benefits. Tenant acknowledges and represents to Landlord, and its successor(s) in interest that Tenant is a related entity to the 2007 Optionee and will therefore share in the consideration paid by the Agency under the above-referenced Option Termination Agreement. Tenant therefore will and hereby does waive any and all claims for any relocation benefits which may be available to Tenant under California Government Code section 7260, *et seq.*, California Code of Regulations sections 6000 *et seq.* together with any claims for loss of business goodwill.

4. Minimum Monthly Rent. The Minimum Monthly Rent shall be payable, in advance of the first day of each month, to Landlord, at the address provided to Tenant pursuant to section 30 of the Lease, as follows:

(a) For the period commencing June 1, 2010 and ending April 30, 2016, the Minimum Monthly Rent shall be Sixteen Thousand One Hundred Eighty-One Dollars and 53/100 (\$16,181.53).

(b) On July 8, 2010 and every six (6) months thereafter until April 30, 2016, the Minimum Monthly Rent will be adjusted upwards or downwards depending on the rate of interest charged on the South Valley National Bank First Deed of Trust No. 888-974052. Changes to the interest rate will be applied to the principal balance of the original loan and the rate shall be applied to the remaining amortization period of the loan to determine the monthly principal and interest payment. The principal balance used to calculate the principal and interest payment will correspond to the original amortization scheduled attached as Exhibit A rather than the actual principal balance of the above loan at the time of the interest rate adjustment. As provided in this lease the Minimum Monthly Rent shall be an amount equal to the principal and interest payment based on the principal balance of the loan shown on Exhibit A, plus the current property taxes and current fire and casualty insurance premiums, plus a fixed monthly payment to Landlord in the amount of Eight Thousand Six Hundred Twenty-Three Dollars and 62/100 (\$8,623.62). The Tenant may credit the Minimum Monthly Rent any monthly interest payments due from Landlord for Tenant's Note and Deed of Trust secured by the property which is attached as Exhibit B.

Example:	Principal and Interest payment @ 5.25%	\$5,168.54
	Impound for Taxes and Insurance	\$2,389.37
	Fixed Payment to Landlord	<u>\$8,623.62</u>
	<u>Minimum Monthly Rental Amount</u>	<u>\$16,181.53</u>

5. Assignment and Subletting. Tenant shall not enter into any new sublease, license or occupancy Agreement or extend any existing sublease, license or occupancy

Agreements, the term of which extends beyond November 30, 2011, without inclusion of an early termination provision permitting any new sublease, license or occupancy agreement to be terminated upon the early termination of the master Lease as set forth in Section 2 above. Under no circumstances shall the term of any sublease, license or occupancy agreement extend beyond the term of the master Lease. Tenant agrees to deliver copies of any such new or amended sublease, license or occupancy Agreement to the Agency at the following address:

Morgan Hill Redevelopment Agency  
17555 Peak Avenue  
Morgan Hill, CA 95037-4128  
Attn: Redevelopment Administrator


6. The Addendum To Lease dated as of May 1, 2006 is hereby stricken in its entirety and the Option Agreement attached thereto as Exhibit A is likewise stricken in its entirety and neither said Addendum nor Option Agreement shall be of any further force and effect, nor shall Tenant have any further rights thereunder.

Except as modified hereby, all other terms, covenants, and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first set forth above.


LANDLORD

LLAGAS VALLEY INVESTMENTS, LLC  
a California Limited Partnership

  
By: GARY WALTON  
Its: Manager

TENANT

DEPOT CENTER INC.  
a California Corporation

  
By: Timothy A. Jones  
Its: President

**EXHIBIT A**  
**(Original Amortization Schedule)**

**EXHIBIT B**  
**(Note and Deed of Trust)**



17555 PEAK AVENUE  
MORGAN HILL, CA 95037-4128  
TEL: 408-779-7271  
FAX: 408-779-1592  
WWW.MORGAN-HILL.CA.GOV

May \_\_, 2010

Mr. Brad Jones & Ms. Cinda Meister  
BookSmart  
80 East 2nd Street  
Morgan Hill, CA 95037-3629

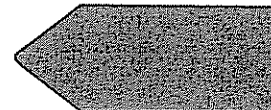
Dear Brad and Cinda

The City of Morgan Hill and the Morgan Hill Redevelopment Agency recognize BookSmart Enterprises Inc. of 95 East Third and 80 East Second Streets, and its owners and operators, Cinda Meister and Brad Jones, as important and valuable contributors to the financial well being and prosperity of downtown Morgan Hill, and to the community as a whole. The City and Agency affirm that Booksmart is a major retail establishment having operated in the downtown for over 15 years and that maintaining an independent bookstore is a compatible and desirable component of the downtown improvement program.

The 2009 Downtown Specific Plan includes an Implementation Goal as follows: "The Morgan Hill Downtown Association (MHDA) will take the lead to identify the needs of existing businesses and find ways to help them. It will also work to identify and attract specific businesses that would help to create a vital Downtown entertainment and shopping district. Business attraction and retention targets will be identified and a plan developed to meet those targets. Additional help in this effort will be provided by the City's Business Assistance and Housing Services Department."

Promoting reasonable opportunities for BookSmart and other existing businesses to remain in downtown in financially viable locations will be an important component of this business retention and attraction plan. The plan may include programs to work with existing downtown businesses, including BookSmart, to secure viable retail locations should development of new structures require existing businesses to relocate from their current locations. BookSmart and other affected downtown businesses should be eligible to participate in City programs developed to achieve the Downtown Specific Plan's goals and objectives.

Sincerely,



Ed Tewes  
City Manager

Recording Requested by:  
Old Republic Title Co.

DOCUMENT: 20746376



Item # 3<sup>8</sup>

Fees + No Fees  
Taxes  
Copies  
AMT PAID

MEMORANDUM

OLD REPUBLIC  
0625006442

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Morgan Hill Redevelopment Agency  
17555 Peak Avenue  
Morgan Hill, CA 95038  
Attn: Redevelopment Administration

Agency Secretary

REGINA ALCOMENDRAS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
Old Republic Title Company

RDE # 012  
6/18/2010  
2:07 PM

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EXEMPT FROM RECORDING FEE PER GOVT. CODE § 27383

168-04-10-015

MEMORANDUM OF OPTION  
APN 726-14-001

A 727-10-40  
This Memorandum of Option is effective upon recordation and is entered into by and between Llagas Valley Investments, a California Limited Liability Company, ("Optionor"), and The Morgan Hill Redevelopment Agency, a public body, corporate and politic, ("Optionee"), who agree as follows:

1. Optionor hereby grants to Optionee the option to purchase that certain parcel of real property commonly known as 95 East Third Street, Morgan Hill, CA APN 726-14-001 as more particularly described in Exhibit A attached hereto, pursuant to the terms and conditions of that certain Option Agreement (the "Option Agreement") entered into effective as of May 24, 2010 by Optionor and Optionee, which is hereby incorporated by reference herein.

2. Unless earlier terminated in accordance with the terms of the Option Agreement, if not previously exercised by Optionee, said option to purchase shall expire at Midnight, on April 30, 2016.

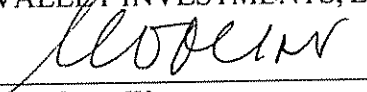
3. This Memorandum of Option is prepared for the purpose of imparting constructive notice of the Option Agreement and in no way modifies the provisions of the Option Agreement.



IN WITNESS WHEREOF, Optionor and Optionee have duly executed this Memorandum of Option on this 24 day of May, 2010.

OPTIONOR:

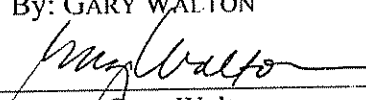
LLAGAS VALLEY INVESTMENTS, LLC, a California Limited Partnership

By:   
Gene Woerner

Its: Manager

Date: May 12, 2010

By: GARY WALTON

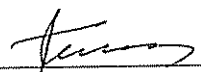
By:   
Gary Walton

Its: Manager

Date: May 12, 2010

OPTIONEE:

MORGAN HILL REDEVELOPMENT AGENCY, a municipal corporation

By:   
J. Edward Tewes

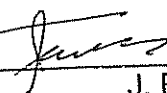
Its: Executive Director

## CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Memorandum of Option dated May 24, 2010 from Llagas Valley Investments, LLC to the Morgan Hill Redevelopment Agency, a public body, corporate and politic, is hereby accepted by order of the Board of Members by the undersigned officer or agent on behalf of the Board, pursuant to joint authority conferred by Resolution No. MHRA-315, of the Board Members of Morgan Hill Redevelopment Agency, adopted on May 19, 2010, and of the Optionee consents to recordation thereof by its duly authorized officer.

Dated: May 24, 2010

MORGAN HILL REDEVELOPMENT AGENCY

By:   
J. Edward Tewes  
Its: Executive Director

APPROVED AS TO FORM:  
Nossaman LLP  
Special Outside Counsel

  
By: F. Gale Connor

State of California

County of Santa Clara

On 5/12/2010 before me, L. Conley, a Notary  
Public, personally appeared Gene Woerner and Gary Walton

\_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)  
acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is  
true and correct.

WITNESS my hand and official seal.

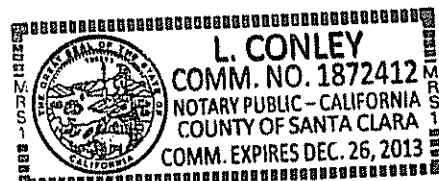
Signature

*L. Conley*

Name:

L. Conley

(typed or printed)



(Area reserved for official notarial seal)

## ACKNOWLEDGMENT

State of California )

County of Santa Clara )

On May 24, 2010, before me Tina McVay, Notary Public  
Here Insert Name and Title of the Officer  
 personally appeared, J. Edward Tewes  
Names(s) of Signers

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature: [Signature]  
Signature of Notary Public

## EXHIBIT A

THE CURRENT PRINCIPAL BALANCE OF SVN B LOAN # 10806255 FOR THE DEPOT CENTER AS OF 6/7/10 IS \$748,533.02. THE INTEREST RATE OF THE LOAN IS CALCULATED ON THE 11<sup>TH</sup> DISTRICT COST OF FUNDS PLUS A 3% SPREAD. THE FLOOR RATE IS 5.25%. THE MONTHLY PAYMENT IS ADJUSTED EVERY SIX MONTHS. THE NEXT ADJUSTMENT FOR THE LOAN IS 7/8/10. LEASE PAYMENTS WILL BE BASED ON THE FOLLOWING SCHEDULE ADJUSTED FOR CHANGES IN THE INTEREST RATE THAT MAY BE CHARGED BY THE BANK FROM TIME TO TIME. CHANGES TO THE LEASE PAYMENTS WILL BE GOVERNED BY THE PRINCIPAL BALANCE SHOWN IN THE ATTACHED SCHEDULE AT THE TIME THE INTEREST RATE IS CHANGED BY SVN B NOT BY THE ACTUAL PRINCIPAL BALANCE OF THE LOAN AS SET FORTH IN THE TERMS OF THE MASTER LEASE WHICH THIS EXHIBIT IS MADE A PART OF.

Month / Year	Payment	Principal Paid	Interest Paid	Total Interest	Balance
				\$3,274.83	\$746,626.21
July 2010	\$5,181.64	\$1,906.81	\$3,274.83	\$6,541.32	\$744,711.05
Aug. 2010	\$5,181.64	\$1,915.15	\$3,266.49	\$9,799.43	\$742,787.52
Sept. 2010	\$5,181.64	\$1,923.53	\$3,258.11	\$13,049.13	\$740,855.57
Oct. 2010	\$5,181.64	\$1,931.95	\$3,249.70	\$16,290.37	\$738,915.17
Nov. 2010	\$5,181.64	\$1,940.40	\$3,241.24	\$19,523.12	\$736,966.28
Dec. 2010	\$5,181.64	\$1,948.89	\$3,232.75	\$22,747.35	\$735,008.87
Jan. 2011	\$5,181.64	\$1,957.42	\$3,224.23	\$25,963.02	\$733,042.89
Feb. 2011	\$5,181.64	\$1,965.98	\$3,215.66	\$29,170.08	\$731,068.31
Mar. 2011	\$5,181.64	\$1,974.58	\$3,207.06	\$32,368.50	\$729,085.09
April 2011	\$5,181.64	\$1,983.22	\$3,198.42	\$35,558.25	\$727,093.19
May 2011	\$5,181.64	\$1,991.90	\$3,189.75	\$38,739.28	\$725,092.58
June 2011	\$5,181.64	\$2,000.61	\$3,181.03	\$41,911.56	\$723,083.22
July 2011	\$5,181.64	\$2,009.36	\$3,172.28	\$45,075.05	\$721,065.06
Aug. 2011	\$5,181.64	\$2,018.15	\$3,163.49	\$48,229.71	\$719,038.08
Sept. 2011	\$5,181.64	\$2,026.98	\$3,154.66	\$51,375.50	\$717,002.23
Oct. 2011	\$5,181.64	\$2,035.85	\$3,145.79	\$54,512.39	\$714,957.47
Nov. 2011	\$5,181.64	\$2,044.76	\$3,136.88	\$57,640.33	\$712,903.76
Dec. 2011	\$5,181.64	\$2,053.70	\$3,127.94	\$60,759.28	\$710,841.07
Jan. 2012	\$5,181.64	\$2,062.69	\$3,118.95	\$63,869.21	\$708,769.36
Feb. 2012	\$5,181.64	\$2,071.71	\$3,109.93	\$66,970.08	\$706,688.58
Mar. 2012	\$5,181.64	\$2,080.78	\$3,100.87	\$70,061.84	\$704,598.70
April 2012	\$5,181.64	\$2,089.88	\$3,091.76	\$73,144.46	\$702,499.68
May 2012	\$5,181.64	\$2,099.02	\$3,082.62	\$76,217.89	\$700,391.47
June 2012	\$5,181.64	\$2,108.21	\$3,073.44	\$79,282.11	\$698,274.04
July 2012	\$5,181.64	\$2,117.43	\$3,064.21	\$82,337.06	\$696,147.34
Aug. 2012	\$5,181.64	\$2,126.69	\$3,054.95	\$85,382.70	\$694,011.34
Sept. 2012	\$5,181.64	\$2,136.00	\$3,045.64	\$88,419.00	\$691,866.00
Oct. 2012	\$5,181.64	\$2,145.34	\$3,036.30	\$91,445.91	\$689,711.27
Nov. 2012	\$5,181.64	\$2,154.73	\$3,026.91	\$94,463.40	\$687,547.11
Dec. 2012	\$5,181.64	\$2,164.16	\$3,017.49	\$97,471.42	\$685,373.49
Jan. 2013	\$5,181.64	\$2,173.62	\$3,008.02		

# Item # 3

Feb. 2013	\$5,181.64	\$2,183.13	\$2,998.51	\$100,469.93	\$683,190.35
Mar. 2013	\$5,181.64	\$2,192.69	\$2,988.96	\$103,458.89	\$680,997.67
April 2013	\$5,181.64	\$2,202.28	\$2,979.36	\$106,438.25	\$678,795.39
May 2013	\$5,181.64	\$2,211.91	\$2,969.73	\$109,407.98	\$676,583.48
June 2013	\$5,181.64	\$2,221.59	\$2,960.05	\$112,368.03	\$674,361.89
July 2013	\$5,181.64	\$2,231.31	\$2,950.33	\$115,318.37	\$672,130.57
Aug. 2013	\$5,181.64	\$2,241.07	\$2,940.57	\$118,258.94	\$669,889.50
Sept. 2013	\$5,181.64	\$2,250.88	\$2,930.77	\$121,189.70	\$667,638.63
Oct. 2013	\$5,181.64	\$2,260.72	\$2,920.92	\$124,110.62	\$665,377.90
Nov. 2013	\$5,181.64	\$2,270.62	\$2,911.03	\$127,021.65	\$663,107.29
Dec. 2013	\$5,181.64	\$2,280.55	\$2,901.09	\$129,922.75	\$660,826.74
Jan. 2014	\$5,181.64	\$2,290.53	\$2,891.12	\$132,813.86	\$658,536.21
Feb. 2014	\$5,181.64	\$2,300.55	\$2,881.10	\$135,694.96	\$656,235.66
Mar. 2014	\$5,181.64	\$2,310.61	\$2,871.03	\$138,565.99	\$653,925.05
April 2014	\$5,181.64	\$2,320.72	\$2,860.92	\$141,426.91	\$651,604.33
May 2014	\$5,181.64	\$2,330.87	\$2,850.77	\$144,277.68	\$649,273.45
June 2014	\$5,181.64	\$2,341.07	\$2,840.57	\$147,118.25	\$646,932.38
July 2014	\$5,181.64	\$2,351.31	\$2,830.33	\$149,948.58	\$644,581.07
Aug. 2014	\$5,181.64	\$2,361.60	\$2,820.04	\$152,768.62	\$642,219.47
Sept. 2014	\$5,181.64	\$2,371.93	\$2,809.71	\$155,578.33	\$639,847.53
Oct. 2014	\$5,181.64	\$2,382.31	\$2,799.33	\$158,377.67	\$637,465.22
Nov. 2014	\$5,181.64	\$2,392.73	\$2,788.91	\$161,166.58	\$635,072.49
Dec. 2014	\$5,181.64	\$2,403.20	\$2,778.44	\$163,945.02	\$632,669.29
Jan. 2015	\$5,181.64	\$2,413.72	\$2,767.93	\$166,712.95	\$630,255.57
Feb. 2015	\$5,181.64	\$2,424.28	\$2,757.37	\$169,470.32	\$627,831.30
Mar. 2015	\$5,181.64	\$2,434.88	\$2,746.76	\$172,217.08	\$625,396.41
April 2015	\$5,181.64	\$2,445.53	\$2,736.11	\$174,953.19	\$622,950.88
May 2015	\$5,181.64	\$2,456.23	\$2,725.41	\$177,678.60	\$620,494.65
June 2015	\$5,181.64	\$2,466.98	\$2,714.66	\$180,393.26	\$618,027.67
July 2015	\$5,181.64	\$2,477.77	\$2,703.87	\$183,097.13	\$615,549.90
Aug. 2015	\$5,181.64	\$2,488.61	\$2,693.03	\$185,790.16	\$613,061.28
Sept. 2015	\$5,181.64	\$2,499.50	\$2,682.14	\$188,472.31	\$610,561.78
Oct. 2015	\$5,181.64	\$2,510.44	\$2,671.21	\$191,143.51	\$608,051.35
Nov. 2015	\$5,181.64	\$2,521.42	\$2,660.22	\$193,803.74	\$605,529.93
Dec. 2015	\$5,181.64	\$2,532.45	\$2,649.19	\$196,452.93	\$602,997.48
Jan. 2016	\$5,181.64	\$2,543.53	\$2,638.11	\$199,091.05	\$600,453.95
Feb. 2016	\$5,181.64	\$2,554.66	\$2,626.99	\$201,718.03	\$597,899.29
Mar. 2016	\$5,181.64	\$2,565.83	\$2,615.81	\$204,333.84	\$595,333.46
April 2016	\$5,181.64	\$2,577.06	\$2,604.58	\$206,938.43	\$592,756.40
May 2016	\$5,181.64	\$2,588.33	\$2,593.31	\$209,531.73	\$590,168.06
June 2016	\$5,181.64	\$2,599.66	\$2,581.99	\$212,113.72	\$587,568.40
July 2016	\$5,181.64	\$2,611.03	\$2,570.61	\$214,684.33	\$584,957.37
Aug. 2016	\$5,181.64	\$2,622.46	\$2,559.19	\$217,243.52	\$582,334.92

**ORDER NO.:** 0625006442-

**EXHIBIT A**

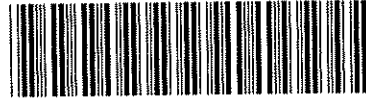
The land referred to is situated in the County of Santa Clara, City of Morgan Hill, State of California, and is described as follows:

LOT 1, 2, 3, 4, 5, 6, 7, 8, and 15, BLOCK 18, as delineated upon that certain Map entitled "Morgan Hill Ranch Map No. 2", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on September 10, 1892 in Book G of the Maps, at Page 19.

APN: 726-14-001  
A727-10-40

DOCUMENT: 21116611

Pages: 6



Fees	* No Fees
Taxes	
Copies	
AMT PAID	

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

The City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, CA 95038  
Attn: City Manager

REGINA ALCOMENDRAS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
City

RDE # 005  
3/21/2011  
10:17 AM

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EXEMPT FROM RECORDING FEE PER GOVT. CODE § 27383

**MEMORANDUM OF ASSIGNMENT OF OPTION  
APN 726-14-001**

This Memorandum of Assignment of Option is effective upon recordation and is entered into by and between the Morgan Hill Redevelopment Agency, a public body, corporate and politic ("Assignor"), and The City of Morgan Hill, a municipal corporation, ("Assignee"), who agree as follows:

1. Assignor has been granted the option to purchase that certain parcel of real property commonly known as 95 East Third Street, Morgan Hill, CA APN 726-14-001 as more particularly described in Exhibit A attached hereto (the "Property"), pursuant to the terms and conditions of that certain Option Agreement between Assignor and Llagas Valley Investments, a California Limited Liability Company ("Optionor") entered into effective as of May 24, 2010, (the "Option Agreement") which is hereby incorporated by reference herein.

2. The option to purchase the Property ("Option") is evidenced by that certain Memorandum of Option entered into by Optionor and Assignor dated May 24, 2010 and recorded in the Official Records of Santa Clara County, California on June 18, 2010, as Document No. 20746376.

Pursuant to that certain Option Assignment Agreement Assignor has transferred, conveyed and assigned to Assignee all of the Assignor's rights and interests in and to the Property including the Option. Assignee has agreed to take title to the Property in accordance with its obligations under the Public Facilities Agreement approved and authorized by Morgan Hill Redevelopment Agency Resolution No. MHRA-337 and City of Morgan Hill Resolution No. 6396.

3. Assignor and Assignee have agreed to give notice of said assignment by recording this Memorandum of Assignment of Option.



IN WITNESS WHEREOF, Optionor and Optionee have duly executed this Memorandum of Option on this 16th day of March, 2011.

ASSIGNOR:

MORGAN HILL REDEVELOPMENT AGENCY, a municipal corporation

By: 

Leslie Little

Its: Assistant City Manager for Community Development

ASSIGNEE:

CITY OF MORGAN HILL, a municipal corporation

By: 

Garrett Toy

Its: Director of Business Assistance & Housing Services

ORDER NO. : 0625006442-LC

**EXHIBIT A**

The land referred to is situated in the County of Santa Clara, City of Morgan Hill, State of California, and is described as follows:

LOT 1, 2, 3, 4, 5, 6, 7, 8, and 15, BLOCK 18; as delineated upon that certain Map entitled "Morgan Hill Ranch Map No. 2", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on September 10th, 1892 in Book G of Maps, at Page 19.

APN: 726-14-001  
A727-10-40

## NOTARY ACKNOWLEDGMENT

State of California )  
 County of Santa Clara )

On March 16, 2011 12:53pm before me, Michelle Wilson, a notary public, personally appeared Leslie Andersen Little, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(This area for official notarial seal)



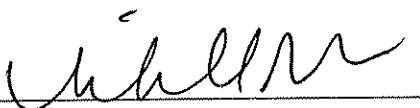
## NOTARY ACKNOWLEDGMENT

State of California )  
 County of Santa Clara )

On March 16, 2011 12:53pm before me, Michelle Wilson, a notary public, personally appeared Garrett Timothy Toy, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(This area for official notarial seal)




## CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Memorandum of Assignment of Option dated March 16, 2011 from the Morgan Hill Redevelopment Agency, a public body, corporate and politic, to the City of Morgan Hill, a municipal corporation, is hereby accepted by order of the City Council by the undersigned officer or agent on behalf of the Council, pursuant to authority conferred by Resolution No. 5059, of the Council of the City Morgan Hill adopted on February 5, 1997, and that Assignee consent to recordation thereof by its duly authorized officer.

Dated: March 16, 2011

CITY OF MORGAN HILL

By:   
Leslie Little  
Its: Assistant City Manager for Community  
Development

APPROVED AS TO FORM:  
Nossaman LLP  
Special Outside Counsel

By: F. Gale Connor

#4

OLTC 062500 8261

Item # 3

RECORDING REQUESTED BY AND WHEN RECORDED MAIL  
DOCUMENT AND TAX STATEMENT TO:

Recording Requested by:  
Old Republic Title Co.

NAME CITY CLERK. CITY OF MORGAN HILL

STREET ADDRESS 17555 Peak Avenue

CITY, STATE & ZIP CODE MORGAN HILL, CA 95037

DOCUMENT: 21334322



Pages: 3

Fees \* No Fees  
Taxes  
Copies  
AMT PAID

REGINA ALCOMENDRAS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
Old Republic Title Company

RDE # 005  
9/23/2011  
3:11 PM

108-04-11-024

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

A727-10-40

### MEMORANDUM OF ASSIGNMENT OF OPTION

APN 726-14-001

The undersigned grantor(s) declare(s) EXEMPT BY REVENUE AND TAX CODE  
DOCUMENTARY TRANSFER TAX \$ SECTION 11922 (signed: )  
☐ computed on full value of property conveyed, or  
☐ computed on full value less liens and encumbrances remaining at time of sale.  
☐ Unincorporated Area City of Morgan Hill

This Memorandum of Assignment of Option is effective upon recordation and is entered into by and between the CITY OF MORGAN HILL, a municipal corporation ("Assignor") and MORGAN HILL ECONOMIC DEVELOPMENT CORPORATION, a Nonprofit Public Benefit Corporation for Public and Charitable Purposes ("Assignee") who agree as follows:

The Morgan Hill Redevelopment Agency, a Public Body Corporate and Politic ("Optionee") has been granted the option to purchase that certain parcel of real property commonly known as 95 East Third Street, Morgan Hill, CA APN 726-14-001 as more particularly described in Exhibit A attached hereto (the "Property"), pursuant to the terms and conditions of that certain Option Agreement between Optionee, and Llagas Valley Investments, a California Limited Liability Company, ("Optionor") which was entered into effective as of May 24, 2010, (the "Option Agreement") and which is hereby incorporated by reference herein. The option to purchase the Property is evidenced by that certain Memorandum of Option entered into by Optionor and Assignor dated May 24, 2010 and recorded in the Official Records of Santa Clara County, California on June 18, 2010, as Document No. 20746376.

The Morgan Hill Redevelopment Agency has assigned the option to purchase the Property ("Option") to the City of Morgan Hill pursuant to an Option Assignment Agreement entered into as of March 16, 2011 and which is incorporated by reference herein. The Option Assignment Agreement is evidenced by that certain Memorandum of Option entered into by Optionee and City of Morgan Hill dated March 16, 2011 and recorded in the Official Records of Santa Clara County, California on March 21, 2011, as Document No. 21116611

Pursuant to a Four Party Option Assignment Agreement entered into as of 9/15/11 the City of Morgan Hill has transferred, conveyed and assigned to Assignee all of the Assignor's rights and interests in the Option to Assignee pursuant to City of Morgan Hill Resolution No. 6411. Assignee has agreed to accept said rights and obligations pursuant to MHEDC No. 003.

Assignor and Assignee have agreed to give notice of said assignment by recording this Memorandum of Assignment of Option.

IN WITNESS WHEREOF, Assignor and Assignee have duly executed this Memorandum of Option on this 15 day of September, 2011.

ASSIGNOR

CITY OF MORGAN HILL

By: [Signature]  
J. Edward Tewes

ASSIGNEE

MORGAN HILL ECONOMIC DEVELOPMENT CORPORATION

By: [Signature]  
J. Edward Tewes

STATE OF California

COUNTY OF Santa Clara

On September 15, 2011 before me, Michelle Wilson, Notary Public  
(Date) (Name and title of the officer)

personally appeared J. Edward Tewes, who proved to me on the basis of  
(Name of person signing)

satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal

[Signature]  
Signature of officer



STATE OF California

COUNTY OF Santa Clara

On September 15, 2011 before me, Michelle Wilson, Notary Public  
(Date) (Name and title of the officer)

personally appeared J. Edward Tewes, who proved to me on the basis of  
(Name of person signing)

satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal

[Signature]  
Signature of officer



**ORDER NO. : 0625006442-**

**EXHIBIT A**

The land referred to is situated in the County of Santa Clara, City of Morgan Hill, State of California, and is described as follows:

LOT 1, 2, 3, 4, 5, 6, 7, 8, and 15, BLOCK 18, as delineated upon that certain Map entitled "Morgan Hill Ranch Map No. 2", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on September 10th, 1892 in Book G of Maps, at Page 19.

APN: 726-14-001  
A727-10-40